

# EXHIBIT “D”

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

VIRGINIA ELIZONDO,	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No.
	§	4:21-CV-01997
	§	
SPRING BRANCH INDEPENDENT	§	
SCHOOL DISTRICT, ET AL.,	§	
Defendants.	§	

\*\*\*\*\*

ORAL DEPOSITION OF  
JOHN R. ALFORD, PH.D.  
MARCH 24, 2022

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ORAL DEPOSITION OF JOHN R. ALFORD, PH.D., produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on the 24th day of March, 2022, from 10:27 a.m. to 2:16 p.m., before John G. Rochelle, CSR in and for the State of Texas, reported by machine shorthand, at the SBISD Athletic Complex, 1050 Dairy Ashford Street, Houston, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

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ALSO PRESENT:

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1 (Exhibit Nos. 1 through 8 premarked.)

2 JOHN R. ALFORD, PH.D.,  
3 having been first duly sworn, testified as follows:

4 EXAMINATION

5 BY MR. GOLANDO:

6 Q. Good morning, Dr. Alford.

7 A. Good morning.

8 Q. My name is Martin Golando. We've met before.  
9 I represent Virginia Elizondo in this case. And you've  
10 read the pleadings, and you've read the expert reports;  
11 is that correct?

12 A. That's correct.

13 Q. And you've had your deposition taken -- I don't  
14 know -- 140 times, something like that?

15 A. I don't know if it's that many times, but it  
16 seems like that many times.

17 Q. So you're well-acquainted with the process. I  
18 don't think I've ever deposed you before, but --

19 A. I don't think so.

20 Q. -- I am a little inarticulate. I talk a little  
21 mushmouthy. And so if you don't understand what I'm  
22 asking you to do, or asking you to say, it's my fault.  
23 So just ask me to repeat it, or I'll have him repeat it  
24 to you. It's just I want to make sure that we're very  
25 clear on the record the questions and answers. Right?

1 The second instruction, I think, is the -- I need you to  
2 wait till I finish asking the question, and then you can  
3 answer. And I will try not to interrupt you. If you  
4 would try not to interrupt me, I'd be appreciative. And  
5 if you don't understand anything I'm saying or if you  
6 don't understand the question, again, just let me know,  
7 and we'll try to work it through. I promise.

8 So would you mind telling me what is your  
9 full name for the record, please?

10 A. It's John Richard Alford.

11 Q. And where do you live, sir?

12 A. I live in Houston, Texas.

13 Q. Okay. And did you go to high school here? I  
14 think you did. Right?

15 A. I went to -- it's a good, good question. I  
16 went to -- I went to Clear Creek High School, which is  
17 of course in Galveston County. And we lived on the --  
18 what would not be in Houston, but at the time had not  
19 yet been annexed so --

20 Q. Interesting. Fair enough. And so where did  
21 you go to school first for college?

22 A. University of Houston.

23 Q. And when were you there roughly?

24 A. Late '70s.

25 Q. Okay. Did you ever do any drama there?

1 A. No.

2 Q. Because they had a great drama teacher. I  
3 don't know if you knew that or not.

4 A. Oh, yeah. Like world-renowned, really amazing.  
5 And a very -- the University of Houston is a place I'm  
6 very proud of.

7 Q. I would be, too. So if you watch any of the  
8 Lakers series, the guy who's playing Bill Sharman --

9 A. Yeah.

10 Q. -- actually went to the University of Houston  
11 at roughly the time you were there.

12 A. Yeah.

13 Q. I didn't know if you --

14 A. Yeah.

15 Q. -- if you knew him or not.

16 A. Yeah. They had a pretty good basketball team  
17 back then, too.

18 Q. They did. Is that Calvin Hayes or --

19 A. Yeah. Yeah.

20 Q. Yeah. Fair enough.

21 A. Yeah. When I was in high school was sort of  
22 their -- it was their real peak for U of H basketball.  
23 I guess I was in middle school when -- I think when  
24 they -- when they beat UCLA, which was just spectacular.

25 Q. And it was 1973?



1           A. Yeah. Yeah. So it would have been -- no.  
2       Yeah, I guess I would have been there. Pretty -- you  
3       know, I spent a lot of time talking to people from  
4       the -- sort of that era and the era just before I was  
5       there. It was just a really interesting time. And Gene  
6       Locke has some fascinating stories about his time at U  
7       of H. It was just a -- you know, it was a very short  
8       time before I was there, but a different world than it  
9       was by the time -- by the '70s. The '60s at U of H was  
10      quite different. So it's interesting.

11           **Q. That's interesting. And after that you went**  
12      **and got an MPA; is that correct?**

13           A. I got a -- yes. I got a bachelor's and a  
14      master's of public administration.

15           **Q. And then you went to Iowa, correct?**

16           A. Iowa. Correct.

17           **Q. And when were you in Iowa?**

18           A. So Iowa would have been from, say, '79 to '84.  
19      Something like that.

20           **Q. And what did you study at Iowa? What was your**  
21      **major course of study?**

22           A. So American politics, methodology, and public  
23      policy.

24           **Q. And did you study Bernie Grofman then and his**  
25      **ecological regression at the time, or what did you --**

1     **what was your first introduction to regression?**

2           A. That probably would have been the first time I  
3 was familiar with that. And then when I -- I continued  
4 to work with some people at U of H, and so I -- and  
5 Bernie back and forth for a time period because mother  
6 lived in Houston for a while. So I met him. And we  
7 didn't ever actually work on any research projects  
8 together; but, you know, he's a -- he's an amazing  
9 fella.

10           **Q. He is. He's extraordinarily impressive. So**  
11 **you were at Iowa, got your Ph.D., and you came back to**  
12 **Houston? Or what was your first job out of Iowa?**

13           A. No. I got a job at Oakland University.

14           **Q. In Michigan?**

15           A. Yes.

16           **Q. Okay.**

17           A. I wasn't aware of the fact it was in Michigan.  
18 When I accepted the interview I thought it was in  
19 Oakland. Foolish me. You know, pretty much -- I was  
20 born in Japan, but I pretty much grew up in Houston.  
21 And so Iowa was a very cold experience for me.

22           **Q. I bet.**

23           A. I was excited about getting somewhere else, and  
24 I wasn't really thinking about going kind of further  
25 north. And so I went to -- I went to Oakland. I was

1 there for a year. And then I got recruited by  
2 University of Georgia. So I was at University of  
3 Georgia for a couple of years. And then the professor  
4 who had been my mentor at U of H in the meantime had  
5 jumped to Rice, and he recruited me to come back to  
6 Houston.

7 Q. Must have been nice to come home, I guess?

8 A. Yeah.

9 Q. So you said you were born in Japan? Is that  
10 correct?

11 A. Yes.

12 Q. Was your dad in the military, mom in the  
13 military?

14 A. My dad is a -- yeah, an Army officer, and  
15 so we -- it was during the Korean war. He was stationed  
16 in -- he had been in the Pacific in World War II but  
17 then came back in the Korean war and was in a -- running  
18 a supply area in southern Japan. That's where I was  
19 born.

20 Q. I didn't know that. I guess you bounced around  
21 a bit, huh, after that or --

22 A. Iran, Vienna, lots of different places in the  
23 United States. When he retired from the military out  
24 of -- we came back to Fort Bliss. He retired out of  
25 Fort Bliss and then immediately took a job with a

1 construction company in Iran. Then we spent a year in  
2 Vienna, then a couple years in Washington, D.C., where  
3 he was doing consulting, and then Corpus Christi and  
4 some other places before he -- he finally settled down,  
5 went to work for NASA when they were just building  
6 the -- building that up. And that's where -- so that's  
7 where I settled in and went to middle school and high  
8 school. But a lot of moving around before that.

9 **Q. Me too. Not quite to Iran, but -- I'm going to**  
10 **hand you the --**

11 A. Yeah. You pretty much trump anybody with Iran  
12 because nobody lived there.

13 **Q. So you were in Iran during -- when there was a**  
14 **shah, right?**

15 A. We actually met the shah.

16 **Q. What was that like?**

17 A. Unimaginably weird, like -- like waking up in  
18 some kind of a weird '50s Disney movie or something  
19 because they -- this was to celebrate the opening of --  
20 the completion of this dam project, and they completely  
21 remade the town. I mean, they just -- like they changed  
22 the -- you know, artificially sort of with paper and  
23 stuff changed the outside of the building. So they had  
24 all these gold banners everywhere. Everybody put on  
25 these fancy clothes. And just like a weird retinue of

1 people coming through. And, you know, it was just -- it  
2 was very, very strange.

3 **Q. How old were you?**

4 A. It was -- let's see. Six.

5 **Q. Wow.**

6 A. So it was -- at the time it just seemed -- I  
7 mean, everything about Iran seemed fanciful. Most  
8 things about Vienna seemed fanciful, too, but -- but I  
9 actually haven't been back to Iran, but I've been back  
10 to where we lived in Vienna. It's one of those things  
11 where you -- when you're a kid you think, you know,  
12 everything is weird and strange and big. And I remember  
13 talking to my brother, and I said, "You know, do you  
14 remember like when we lived in Vienna? I remember we  
15 were living in this really huge, almost like a castle on  
16 a hill, and it had a turret, and there were like" --  
17 "the people lived in the turret, and we weren't allowed  
18 to go in there." And my brother said -- he was younger.  
19 My brother was a couple of years younger than me. He  
20 said, "You know, I've heard like our sister talking  
21 about that," but he said, "I'm not sure that is true."  
22 So I went back to Vienna, and it turned out it all was  
23 true.

24 **Q. That's wild.**

25 A. Yeah.

1           Q. So you're here pursuant to a notice of  
2 deposition, correct?

3           A. Correct.

4           Q. Have you seen the notice, sir?

5           A. I have.

6           Q. I'm going to hand it to you. It's been  
7 previously marked as Exhibit No. 1. Could you review it  
8 for me and make sure it's authentic?

9           A. Yeah, that's what I remember seeing.

10          Q. So did you see the subpoena in the back for the  
11 documents?

12          A. Yes.

13          Q. Okay. Did you have any documents for me?

14          A. I have -- I consulted with Mr. Crawford, and I  
15 have documents that are related to my report.

16          Q. Okay.

17          A. And to my contract with the attorneys.

18          Q. Did you bring them with you today? Because I  
19 have not seen them.

20          A. Oh. Sorry.

21                 MR. CRAWFORD: John, are these your  
22 originals?

23                 THE WITNESS: They're --

24                 MR. CRAWFORD: We can get copies made for  
25 you.

1                   **MR. GOLANDO:** Please. That would be great.

2           A. So this is a -- this is just the email exchange  
3 that was related to the contract. This is the contract.  
4 And this is -- in the report I referenced a web page  
5 related to single-member versus at-large. And then I  
6 referenced a press release from the Republican Party.  
7 So those are the -- other than the documents that I  
8 consulted that were either Dr. Stein's report or his own  
9 articles he cited, that sort of thing, these are the  
10 things that both related to the contract and to  
11 materials I relied on or referenced in the report.

12           **Q. (BY MR. GOLANDO) This is the entirety of the**  
13 **documents --**

14           A. Yes.

15           **Q. -- that you believe are responsive to the**  
16 **subpoena, correct?**

17           A. Yes.

18           **Q. I'm going to give these to your counsel so he**  
19 **can review them and then give me what he thinks is**  
20 **responsive. And I'm going to have Barry review it**  
21 **during the deposition. And I don't think we'll have any**  
22 **questions about it, but if we do I want to make sure we**  
23 **get it tacked on at the end, if you don't mind.**

24           A. Yes.

25           **Q. Have you worked for Spring Branch ISD in the**

1 **past?**

2 A. Yes.

3 **Q. What was the nature of that engagement?**

4 A. So I'm -- I'm not entirely sure about the  
5 specific years, but sort of the timeline, my  
6 recollection is that there was a lawsuit filed against  
7 the district previously. And it could have been in  
8 the -- perhaps in the '90s, maybe in the early 2000s,  
9 but some -- some time ago. And I was hired by Robert  
10 Heath, who was the attorney that was hired to defend the  
11 school district. And I worked with him on that. And I  
12 don't know if the -- I can't remember what the  
13 resolution of that was. It didn't go to trial. I think  
14 it was either dismissed or nonsuited. I'm not really  
15 sure.

16 **Q. Do you remember the nature of it? Was it a**  
17 **voting rights lawsuit?**

18 A. It was a -- it was a Section 2 voting rights  
19 lawsuit, and the -- it turned out that it wasn't  
20 possible to -- the only part that I had in it, my  
21 recollection is, that it started with some -- a lot of  
22 debate about whether Gingles 1 could be met, and that  
23 ended up being what the suit was either dismissed or  
24 nonsuited over, was the inability to actually draw a  
25 majority-minority district.



1           **Q. Did you review Gingles 2 or 3 testimony?**

2           A. I -- I just don't -- I don't remember whether  
3 that -- whether we had started that or hadn't, but I --  
4 I certainly didn't do anything in the sense of a report  
5 on it or anything. I don't -- you know, Bob Heath may  
6 still have that information. I don't even have the  
7 records from that era anymore. But I don't -- I don't  
8 recall doing -- again, I may have or may not. I know it  
9 wasn't -- -- it never got to that stage in terms of --  
10 either of my doing a formal report or a deposition.

11           **Q. Do you recall coming to an opinion about**  
12 **racially polarized voting in any sense in SBISD at that**  
13 **time period?**

14           A. No, I don't think -- I don't recall anything at  
15 that time period, no.

16           **Q. Is that the extent of your previous engagement**  
17 **with SBISD? Did you do anything else for them in the**  
18 **intervening years?**

19           A. So in the intervening years when -- I'm not  
20 sure exactly about the dates on this, but sometime more  
21 recently I was retained to work with counsel for the  
22 district on issues related to the districting scheme.  
23 So they -- the district was considering alternatives to  
24 the current at-large system, including single-member or  
25 mixed plans. There was -- I think most of my discussion

1 with them had to do with alternative elections,  
2 particularly moving to something like cumulative  
3 elections. So I've been involved in the shift in  
4 Amarillo to cumulative elections. And so I think most  
5 of what I provided to the attorneys was information  
6 about kind of the nature of -- I think they had  
7 demographers that were working. I wasn't doing -- so I  
8 do both, you know, sort of redistricting lawsuits, and I  
9 also do redistricting, so I do district drawing. I  
10 didn't -- I wasn't involved in drawing districts for  
11 them. They had some demographer doing that. I was  
12 mainly involved in sort of providing information about  
13 how cumulative elections would work and sort of what  
14 were the -- what were kind of the critical break points.

15 One of the issues in cumulative elections  
16 are -- it's these thresholds of exclusion. And they  
17 vary depending on how many people are up. And so that  
18 was one of the questions. It's -- you know, it's really  
19 easy to meet the threshold of exclusion if you put all  
20 seven board members up in the same election, but -- but,  
21 you know, there are reasons why districts typically  
22 don't put all their board members up at the same time.  
23 So that was I think the main question that I was  
24 addressing for them, was, you know, what -- what -- what  
25 set of staggered terms involving how many members would

1 meet the threshold of exclusion.

2 **Q. Was that in 2020, or was that in 2019?**

3 A. I think -- I could be wrong about this, but I  
4 think there -- that this may have come up sort of in  
5 that time frame, and then come up again more recently,  
6 maybe -- coming up again maybe in 2017, 2018, somewhere  
7 in that time frame.

8 **Q. But in the last four years roughly?**

9 A. Yes.

10 **Q. Do you recall why they wanted to investigate an**  
11 **alternative election system? By "they" I mean SBISD.**

12 A. I don't -- I don't think I was given a lot of  
13 direct information about sort of what the thinking was,  
14 but my impression was -- or at least I approached it as  
15 probably a combination of motivations maybe, different  
16 motivations possibly by different -- either by different  
17 board members or different people involved. But -- so  
18 my sense is they were -- that they were both looking at  
19 that as something the district might just want to do,  
20 and also looking at it as something the district might  
21 do in a -- in a sort of a prophylactic way; that is, to  
22 avoid being -- to avoid being sued.

23 So at the -- in the very earliest instance  
24 where it was clear that you couldn't draw a Gingles 1  
25 district, I mean, one of the things that -- that I

1 indicated at the time was that while they couldn't draw  
2 a Gingles 1 district at that point, which I think may  
3 have been around 2000, that it was clear that the  
4 population trends, given the direction of population  
5 trends, the day was going to come when they could  
6 draw -- when they could draw a single -- when you could  
7 draw a Gingles 1 district, and that in my experience any  
8 district that could draw a Gingles 1 district should be  
9 thinking seriously about what they intended to do about  
10 it because it's -- it's not that hard to get -- it's not  
11 that hard to win a Voting Rights Act Section 2 case if  
12 you can't draw a single-member district. There's really  
13 only one thing where you're not at the mercy of sort of  
14 interpretation or the court's feelings, or whatever, and  
15 that is the bright line, like -- I mean, even if they  
16 just go under it by, you know, a tenth of a percentage  
17 point, apparently like the one person, one vote standard  
18 for congressional districts, that -- apparently the  
19 court means, literally means one person, one vote.

20 **Q. Yeah.**

21 A. The bright-line test literally means the  
22 bright-line test. And nothing after that, as I always  
23 tell districts when I talk to them, nothing after that  
24 is a bright line, nothing after that you can be assured,  
25 you can say "okay, given this set of facts we're

1 definitely going to win this case or we're going to" --  
2 "you know, we could get this" -- "we could get the  
3 summary judgment or something." Once you get into not  
4 only the other thresholds but the totality of the  
5 circumstance then you -- it's not only does that mean  
6 that you're actually going to probably end up in a full  
7 trial as opposed to getting summary judgment on Gingles  
8 1. That's going to be expensive and it's -- and it's  
9 going to be uncertain and it involves a lot of political  
10 considerations that I think are important for a board to  
11 be -- to be thinking about in advance.

12 It's not something you want to take  
13 lightly. So that was sort of where things were left, or  
14 initially was that this was -- that that point was going  
15 to come, and when that point -- when they reached the  
16 point where they were no longer sort of protected by the  
17 fact that a district couldn't be drawn that they were --  
18 they needed to be thinking about what they wanted to do  
19 at that point so --

20 **Q. Do you remember the names of the demographers**  
21 **involved?**

22 A. I do not.

23 **Q. Do you recall if they did a racially polarized**  
24 **voting analysis, if anybody did?**

25 A. I -- I'm -- I wasn't sort of privy to all of

1 whatever their discussions were. I'm not sure I was  
2 ever in -- either in direct contact with any of the  
3 demographers or present when they were discussing things  
4 with the lawyers, so I -- if they did, I wasn't aware of  
5 it, but I don't know whether they did or not.

6 **Q. Did you do a racially polarized voting**  
7 **analysis?**

8 A. At that point there was a -- I did just a very  
9 preliminary, not -- sort of -- maybe not an actual  
10 racially polarized voting analysis, but a quick look  
11 at -- just looking at sort of where -- where candidate  
12 votes were centered across the rough -- you can only do  
13 it across the rough geography because there's so few  
14 polling places. But just looking at where vote totals  
15 were centered and how they varied across the geography,  
16 but not a formal -- not like a EI formal analysis. At  
17 that point it was just to look at the -- at sort of what  
18 the election results looked like across the rough  
19 geography.

20 **Q. What was your informal conclusion? Do you**  
21 **recall?**

22 A. My informal conclusion was that that rough look  
23 was certainly consistent with the possibility that --  
24 both that Hispanic voters were voting at above 50  
25 percent for preferred candidates, including Hispanic

1 candidates, and that Anglo voters are voting below 50  
2 percent for those candidates, and those candidates  
3 weren't being elected to the board.

4 **Q. Fair enough. And I think I -- in your answer I**  
5 **heard you say you had not done one yet. Have you done a**  
6 **racially polarized voting analysis?**

7 A. Since?

8 **Q. Since.**

9 A. Yes.

10 **Q. And not for this case, but for --**

11 A. Right. Not for this case, but -- but more  
12 recently than the -- so there -- there are sort of three  
13 distinct eras here, the old --

14 **Q. Sure.**

15 A. -- the dinosaur era, which was about meeting  
16 Gingles 1 with Bob Heath, the more recent stuff three,  
17 four years ago looking at -- particularly focusing on  
18 potential things the district might want to think about.  
19 That was, again, this rough kind of look. And in  
20 addition a more direct focus on cumulative voting on  
21 systems with some at-large, you know, some  
22 single-member. And then more recently I was asked by --  
23 we're now at the -- at the second set of attorneys  
24 rather than the third -- at the second set of attorneys  
25 asked to provide the attorneys with, you know, a more

1 complete analysis of the sort that you typically will  
2 see in a case like this.

3 **Q. Did you do ecological inference?**

4 A. Yes.

5 **Q. Gary King's?**

6 A. Well -- oh, God. It's -- it is essentially  
7 Gary King's, but not Gary King's original, and  
8 particularly not his iterative, which I for some reason  
9 find myself fighting about all over the country. People  
10 still insist on using King's iterative, which King only  
11 just mentioned in passing, and then immediately, you  
12 know, replaced with a -- so, yes, the -- what I  
13 typically use is the variant of King's EI that's  
14 sometimes called the Bayesian or I -- I think it more  
15 appropriately is R x C approach. But it's essentially  
16 King's EI.

17 **Q. I understand. And did you do the numbers**  
18 **yourself?**

19 A. I think -- so there were two -- two pieces to  
20 that. There was a standard, just an OLS, which I often  
21 do just as a first estimate. It's not as -- it doesn't  
22 do as good a job. It doesn't give you statistical  
23 significance, but it usually gives you a pretty good  
24 quick picture, which I did. And then the actual EI  
25 would have been run by Randy Stevenson, who's a



1 professor at Rice, who does a lot of programming and  
2 statistical work with me.

3 **Q. And this was before the filing of this suit,**  
4 **correct?**

5 A. I believe so, although I'm not -- I'm not  
6 exactly certain when the suit was filed or exactly  
7 when --

8 **Q. Yes, sir.**

9 A. -- when the work was done. But I -- yeah, I  
10 would say -- I think it was before the suit was filed,  
11 but it could have been -- no, no, no, because there was  
12 discussion -- I think the district was aware that they  
13 could be sued so -- what I'm not sure about is the -- I  
14 had been asked to sort of take a look, so I had done  
15 that very informal look. And I had been asked by the  
16 lawyers to take a look at that, and at that stage I  
17 think probably was when I ran the sort of regression  
18 analysis. Whether that -- whether the actual EI  
19 analysis was done before or shortly after the lawsuit  
20 was filed I don't -- I don't know.

21 **Q. Do you recall the conclusions of that report?**

22 A. I did not provide a report.

23 **Q. Did you recall -- do you recall the findings**  
24 **from your analysis?**

25 A. So the findings I shared with the attorneys

1 from that analysis.

2 MR. CRAWFORD: And so based on that answer  
3 I'll ask you not to disclose what you told the attorneys  
4 based on the attorney-client privilege.

5 Q. (BY MR. GOLANDO) Is Lisa Turner your attorney,  
6 sir?

7 A. Lisa --

8 Q. I'm sorry. What was the previous attorney's  
9 name?

10 MR. CRAWFORD: Lisa McBride.

11 MR. GOLANDO: I'm sorry. I apologize.

12 MR. CRAWFORD: No problem.

13 Q. (BY MR. GOLANDO) Is Lisa McBride your  
14 attorney?

15 A. My attorney? No, she doesn't represent me.

16 Q. All right.

17 A. But that's who I was working for when she  
18 represented the school board.

19 Q. Yeah, I understand. And when she contacted you  
20 to do the EI analysis I heard you to say that it's  
21 possible it happened before the institute of this  
22 lawsuit. Correct?

23 A. That's possible, yes.

24 Q. Okay.

25 MR. GOLANDO: I think we need to -- I need

1 to talk to Barry real quick, if you don't mind.

2 MR. CRAWFORD: Okay.

3 MR. GOLANDO: We're going to take a -- just  
4 a two-minute break.

5 MR. CRAWFORD: Sure.

6 MR. GOLANDO: Two or three-minute break.

7 (Off the record from 10:54 a.m.

8 to 10:55 a.m.)

9 Q. (BY MR. GOLANDO) As I understand it, I asked  
10 you what the contents of that previous analysis was, and  
11 you -- Mr. Crawford objected on the basis of  
12 attorney-client privilege, is that correct, and you're  
13 currently refusing to answer that question? Correct?

14 A. I'm deferring to whatever -- whatever Charles  
15 tells me to do that's what I'll do.

16 Q. I don't think there's a basis to object to that  
17 because I need to know your previous analyses for  
18 credibility and weight. You've been hired on this  
19 position and --

20 MR. GOLANDO: What I'd like to do instead  
21 is to see if we can put this answer under seal, and we  
22 can go fight about it with the --

23 MR. CRAWFORD: No, I'm not willing to waive  
24 it. So what we can do is we can note it in the record,  
25 and then after the deposition we can take it up with the

1 court. And if we need to re-present Dr. Alford we will,  
2 but I'm not comfortable even under seal waiving the --  
3 waiving the objection.

4 **MR. GOLANDO:** I understand. I think that's  
5 reasonable. Fair enough. So let's just move on.

6 **Q. (BY MR. GOLANDO)** So the OLS that you did was  
7 definitely before the lawsuit, correct, the ordinary  
8 least squares?

9 **A.** Could you remind me when the lawsuit was filed?  
10 That might be --

11 **MS. SHAKRA:** June -- June --

12 **MR. GOLANDO:** June of last year.

13 **MS. SHAKRA:** 2021. Probably like June --

14 **MR. GOLANDO:** The 30th?

15 **MS. SHAKRA:** No. It was before the 26th.  
16 I want to say it was maybe like the 12th.

17 **MR. ABRAMS:** I'll be able to tell you in a  
18 minute. Just give me a second.

19 **THE WITNESS:** I feel better for not  
20 knowing. I felt kind of stupid, like I didn't know when  
21 the lawsuit was filed. So this is nice. I feel better.

22 **MS. SHAKRA:** Okay. Let's see.

23 **MR. ABRAMS:** The amended complaint was  
24 filed on June 22nd, so the original complaint would have  
25 been filed several days before.

1           **Q. (BY MR. GOLANDO) So mid June.**

2           A. I was -- I thought it was in the fall, so  
3 that's earlier. So I don't -- I don't know. I mean, I  
4 could -- I could figure that out, but I just don't --  
5 that's -- I didn't realize the lawsuit was filed quite  
6 that early, so I don't -- I may have done that -- I  
7 think I probably did it sometime in the summer, but I  
8 think it might have been more like August rather than --  
9 than in -- sort of in the -- in May. I'm just not sure.

10          **Q. I understand.**

11          A. But I can find out.

12          **Q. If it was in May, then do you recall the**  
13 **outcome or what the ordinary least squares regression**  
14 **showed?**

15               **MR. CRAWFORD:** Again, I'm going to object  
16 to that based on the attorney-client and work product  
17 privileges and doctrine. And, Martin, just to your  
18 point, I believe that even if the lawsuit had not been  
19 filed at that time it was in -- at least in anticipation  
20 of litigation, and the privilege would also apply.

21               **MR. GOLANDO:** Okay.

22               **MR. CRAWFORD:** And the doctrine.

23               **MR. GOLANDO:** We'll see about that.

24               **MR. CRAWFORD:** Sure.

25          **Q. (BY MR. GOLANDO) I'm going to hand you Exhibit**

1 1 again, please. I want you to look at the last number  
2 three of the subpoena. Do you see that, sir?

3 A. Yes.

4 Q. Okay. What does that say? Could you repeat it  
5 for the court?

6 A. It says "All reports that the witness has  
7 prepared for the Spring Branch Independent School  
8 District or its counsel, on any subject for which he  
9 has been compensated."

10 Q. Would you agree with me that those analyses  
11 that you provided Ms. McBride would have been captured  
12 by that -- that request?

13 A. I guess I didn't -- so two issues for me. One  
14 is I wasn't certain about what of that would be -- sort  
15 of normally would be disclosable or not, so I -- you  
16 know, I checked with Charles. And, also, I never  
17 provided a report to the district or the counsel. I  
18 provided, you know, information and some tables, but  
19 I -- I didn't -- it never reached the point of my  
20 actually providing an expert report. So I guess I  
21 wasn't -- I wasn't sure about exactly whether this  
22 entailed sort of everything I ever told the lawyers.  
23 And then I also wasn't sure about what of that was --  
24 what was protected and not, so I'm relying on the  
25 attorneys --

1 Q. I understand.

2 A. -- on that.

3 Q. Did you provide Mr. Crawford or anybody else at  
4 that firm the documents we've just been talking about,  
5 the OLS, or the EI that you did, and it sounds like in  
6 the summer of 2021?

7 A. Anything that had actually -- that I had shared  
8 with the previous attorneys that I still had I would  
9 have provided to Mr. Crawford.

10 Q. Okay.

11 A. I'm not sure that there was any -- I'm not sure  
12 that the OLS analysis was ever even -- anything done  
13 other than just sort of looking at that real quickly in  
14 Excel. I'm not sure that was ever reduced to anything  
15 that -- that would have been transmissible either to  
16 attorneys or to Mr. Crawford. But certainly anything  
17 else that would fall in that category was provided to  
18 him.

19 Q. Do you still have the OLS Excel file?

20 A. It's -- I guess it's possible. I haven't gone  
21 back to look for it because I think, you know, it's  
22 superseded by the EI analysis. But it's possible that  
23 it's -- I could look. It's possible I guess.

24 Q. Without telling me the contents, was the OLS  
25 consistent with the EI?

1           A. Not inconsistent. I guess -- so, I mean, I --  
2     you know, I think -- my recollection is that I wasn't  
3     satisfied that I sort of understood fully what was going  
4     on on the basis of that analysis. So one of the things  
5     that can be problematic with -- well, in lots of things  
6     that can be problematic with OLS -- but it just was  
7     not -- it -- it had, you know, sort of large confidence  
8     intervals, and my recollection is there were some things  
9     internally that didn't look like they -- they were  
10    consistent across some of the elections, whatever,  
11    that -- that led me to think that -- I mean, one of the  
12    things that obviously is important here, as true with  
13    any case where you're dealing with Hispanic voters, is  
14    turnout is really critical to understanding what you're  
15    actually seeing. And turnout doesn't get captured in  
16    the OLS, and so it's -- well, normally -- when I say  
17    "normally," so in a case where you have either the  
18    surnames of the voters, or a case involving black voters  
19    where black VAP is solid as a rock, it really doesn't  
20    make -- you can do the analysis either way. It's going  
21    to be about the same.

22           The advantage for -- for using -- in my  
23    view for using R x C EI with -- if the case is a  
24    Hispanic case and if you're relying on something other  
25    than the vote codes -- so a lot of time you're relying



1 on CVAP for example, and CVAP doesn't account for  
2 turnout. So R x C builds turnout estimation into the  
3 estimation of the vote parameters, and that can -- in  
4 that instance it can produce quite different results  
5 than what you would get where -- where in the exact same  
6 analysis for black voters there would be virtually no  
7 substantive difference. So I'm never very surprised  
8 if -- if the quality of data is low, which for -- that  
9 means anything other than surnames for Hispanic voters,  
10 it's just hard to say for sure if you're going to get a  
11 clean -- a clean result out of the -- out of the OLS.

12 **Q. I think I understand. But if you used voters**  
13 **for your OLS and you used the -- either the -- an icon**  
14 **Bayesian database that would solve that problem,**  
15 **correct?**

16 A. Yeah. I would expect you'd get a much -- you'd  
17 get a much less problematic OLS result. I don't have --  
18 I haven't sort of stress-tested this on this particular  
19 set of data, and I could be wrong about where the --  
20 where the -- where the noise in the OLS was coming from,  
21 but my suspicion at the time was that it was coming  
22 from -- from the lack of turnout information.

23 **Q. Fair enough. I don't have any more questions**  
24 **about that.**

25 **Are there any other reports that you've**

1     **done for SBISD that you haven't disclosed to us?**

2           A. That's -- I mean, I think we've covered all of  
3     what I recall of information, types of information that  
4     I've shared with -- with the attorneys, or the attorneys  
5     shared with the board, or that I was present to discuss  
6     with the board.

7           **Q. And as we're sitting here today you have not**  
8     **provided the plaintiff with that data for the OLS or the**  
9     **data for the EI, correct?**

10          A. Correct.

11          **Q. Thank you, sir. So let's just go a little bit**  
12     **more into your history, if you don't mind.**

13                   How many times -- how many times have you  
14     been an expert in a case involving Section 2 of the  
15     Voting Rights Act?

16          A. It would be 40 or 50 times.

17          **Q. Yeah. A bunch. Have you ever been an expert**  
18     **for an individual voter challenging an election statute?**

19          A. I don't know. Individual voter challenging an  
20     election statute?

21          **Q. As opposed to working for the entity.**

22          A. So mostly by happenstance, or whatever, I  
23     mostly work for entities, I think probably because I  
24     started doing this locally mostly in -- in the area of  
25     drawing districts for entities, and then ended up moving

1 into sort of the Section 2 issues beyond drawing the  
2 districts. So I mostly worked for entities, but I  
3 have -- I mean, I worked on cases where -- where  
4 representatives were challenging district plans, but I  
5 don't know -- I mean, I don't think they were  
6 challenging them as individual voters. I think their  
7 challenge was -- I could be wrong. I don't know why  
8 they were -- what their actual standing was.

9 **Q. Do you remember the representatives? Do you**  
10 **mean state representatives, or do you mean other**  
11 **governmental officials, incumbents?**

12 A. Well, I worked for a group of Democratic  
13 representatives I think organized by Martin Frost --

14 **Q. Okay.**

15 A. -- challenging a congressional plan. I worked  
16 for the Democratic Party in Florida, a challenge  
17 related to I think the congressional districts in  
18 Florida.

19 **Q. And do you have a time period for that, please?**  
20 **The '90s?**

21 A. The '90s I think.

22 **Q. And the Frost would have been in the '90s, too?**  
23 **That was the Bush v. Vera case, right?**

24 A. No.

25 **Q. Okay.**

1           A. I think Frost would have been -- I think Frost  
2 was the redistricting.

3           **Q. Right, right, right. That was the 1997 -- '95,**  
4 **'97 reset. I'm sorry.**

5           A. No. This was the two thousand -- this is  
6 when --

7           **Q. Oh. This is the mid-decade --**

8           A. Yeah. So this is when I worked -- so I worked  
9 for the legislative redistricting board because the  
10 state didn't -- didn't draw lines right. So the  
11 redistricting board drew the lines, but they couldn't  
12 draw the congressional lines. So the court drew the  
13 congressional lines. So that's my congressional plan.  
14 The court actually asked me to give them advice about  
15 how they should go about that, "what would you do, what  
16 would a neutral plan look like?" So I gave them some  
17 advice, and they acknowledged in the decision where they  
18 released the plan that they had appreciated my input, or  
19 whatever.

20                       So I told everybody, I was like, "This is a  
21 dream for somebody who studies Congress. I actually had  
22 a hand in a congressional plan." And they held exactly  
23 one election under it, and then the state -- the state  
24 just like gutted it like a fish. And so -- and so then  
25 this is where the Frost and the other congressional

1 intervenors, they filed suit. They wanted to -- you  
2 know, they wanted to -- basically the point of their  
3 suit was that the state couldn't engage in a  
4 mid-redistricting, or mid-season redistrict, whatever,  
5 that it was already an official plan.

6 **Q. So you drew the plan in Balderas. That's the**  
7 **2000 case. And then you were an expert for the**  
8 **intervenors in the 2003 case?**

9 A. Yes. I didn't draw the plan, but I --

10 **Q. Advised?**

11 A. -- provided some guidelines in what I thought  
12 was appropriate for the court to use, and then testified  
13 on behalf of that plan, when the -- when the state  
14 replaced the plan and then there was a suit over whether  
15 the -- whether that mid-decade redistricting was  
16 appropriate or not. So that was with the -- it was a  
17 Democratic congressman who intervened. I don't remember  
18 exactly who all was in that, but -- but I remember the  
19 lawyer for the state, the first question when I was put  
20 on the stand was, you know, "Why did you switch sides?"  
21 And I said, "I didn't switch sides. You did. This is  
22 the" -- "this is the exact plan, you know, that I" --  
23 "when I was working for you that we helped the court  
24 to" -- because the Attorney General's Office was  
25 involved as well in trying to provide a neutral plan

1 that the court could use. And so --

2 **Q. And that lawyer was Andy Taylor?**

3 A. I think it was Andy at that point. Yeah.

4 Yeah. That would have been back in Andy's day.

5 **Q. So it sounds like those were drawing districts.**

6 **Did you ever do racially polarized voting --**

7 A. No, I was not -- sorry. I was not drawing  
8 districts in the -- when I was working for the  
9 congressional intervenors because they were just  
10 defending the court drawn district against the -- the  
11 district the state had drawn to replace it. But I don't  
12 remember the entire scope of what -- what I was actually  
13 looking at relative to the -- to the new draw as opposed  
14 to the court draw.

15 **Q. Fair enough.**

16 A. And I think in -- if I'm remembering the  
17 Florida case right, it did -- it was a -- it was voting  
18 rights issues related to the treatment of Hispanic  
19 voters in Florida. And I think it was also a  
20 congressional plan, specifically sort of how voters in  
21 southeast versus southwest Florida were treated in terms  
22 of drawing Hispanic districts.

23 **Q. What's the scope of your engagement in your**  
24 **contract, if you don't mind me asking?**

25 A. At least my understanding of it -- you know, I

1 probably pay less attention to these contracts than I  
2 should.

3 **Q. If you want to refresh your recollection --**

4 A. I just say what I -- what I agreed to before  
5 this was drawn up, and this looked to me like it didn't  
6 exceed that, was that I would provide a report that was  
7 essentially responsive to Dr. Stein's report, so that  
8 that was the extent of my involvement, was to provide  
9 response and commentary to his report as opposed to  
10 analysis itself. It was -- my role was to -- basically  
11 to provide a critique and context for Dr. Stein's  
12 report.

13 **Q. And so you have been hired in the past by SBISD**  
14 **to determine whether or not elections are racially**  
15 **polarized in SBISD elections, correct?**

16 A. That was certainly one of the tasks I was asked  
17 to perform previously, yes.

18 **Q. Given your time as an election law expert,**  
19 **racially polarized voting expert, and your association**  
20 **with SBISD since I guess the early 2000s, do you believe**  
21 **that elections in SBISD are racially polarized?**

22 A. I try pretty hard not to reach legal  
23 conclusions in my work as an expert partly because I'm  
24 not a lawyer, and it always pisses me off when lawyers  
25 reach expert conclusions. And so there's sort of a turf

1 issue. But I think also it's -- in my experience, and I  
2 don't think I'm alone in this, you know, the courts have  
3 not -- this is not an area broadly in which the courts  
4 have distinguished themselves in making clear what it is  
5 they want entities to do or plaintiffs to do or lawyers  
6 to do. So, I mean, I have my own sort of view of kind  
7 of how this -- how this makes sense. But I recognize  
8 that the term is used in a variety of ways. It's used  
9 to indicate, by some people, to indicate -- for example,  
10 many plaintiffs' experts believe that the definition of  
11 racially polarized voting is if 50 percent plus one of  
12 the minority voters vote for candidate A and 50 percent  
13 plus one of nonminority voters vote for candidate B then  
14 that's racially polarized voting, and that's -- I don't  
15 think that's true in the -- in itself I don't think  
16 that's true in the legal sense, and I don't actually  
17 think it's even an appropriate label for what's going on  
18 there.

19 But, you know, that's an old dispute going  
20 all the way back to Brennan about -- in which I think  
21 Brennan captured exactly the issue there, is -- you  
22 know, I think -- I'm not sure everybody never says it,  
23 but I think in the current debate what Brennan would  
24 like is for people to come up with a name for that that  
25 isn't racially polarized voting in the sense that, you



1 know, the public understanding of that is -- is that  
2 voting is polarized by race, meaning by some sentiment  
3 or concerns of the race of voters or the race of  
4 candidates, as opposed to just these two groups maybe  
5 voting differently for the same reason lots of other  
6 groups might vote differently.

7 **Q. I think I -- I understand that.**

8 A. Yeah. I'm just not -- I'm not sure if  
9 you're -- what is -- what is it you're asking me?  
10 Have I reached a conclusion, a legal --

11 **Q. No.**

12 A. In a legal sense, no.

13 **Q. I'm asking you as an expert are Latinos**  
14 **politically cohesive in SBISD elections?**

15 **MR. CRAWFORD:** I'm going to object to the  
16 extent that it's outside the scope of this engagement.  
17 And I'll let Dr. Alford make that determination but --

18 **Q. (BY MR. GOLANDO) You can still answer, sir.**

19 A. I'd say, you know, based on -- I mean, for  
20 example, based on the -- on Dr. Stein's report I'd say  
21 there's evidence of modest cohesion among Latino voters.  
22 So there's certainly no evidence of the sort we would  
23 see in the black voters. I don't think Hispanic voters  
24 are voting 90 percent one direction or another. But  
25 there's certainly evidence that suggests that at least

1 in some of the elections more than -- more than a bare  
2 majority of Hispanic voters are favoring Hispanic  
3 candidates.

4 Q. Based on your experience as a election observer  
5 and an analyst for SBISD in the last 20 years of your  
6 employment here, or engagement here, do you believe in  
7 your expert opinion that Latinos are politically  
8 cohesive outside of the Stein report?

9 A. I would say modestly to moderately cohesive.

10 Q. Do you believe that, same question, as to  
11 Anglos? Are they politically cohesive in SBISD  
12 elections?

13 MR. CRAWFORD: Same objection as before to  
14 the extent it exceeds the scope of his engagement.

15 MR. GOLANDO: Yes, sir.

16 A. I think it's harder to say they are, but I  
17 think -- on balance I'd say moderately co -- modestly --  
18 again, sort of modestly to moderately cohesive. So  
19 in -- again, in the sense of the sort of Gingles 2 and  
20 Gingles 3 threshold, not in sort of the broader totality  
21 of the circumstances. But just addressing it as, you  
22 know, what -- what my guess would be about Gingles 2 or  
23 my guess about where you would be on Gingles 3 that's --  
24 that's what I would guess. And I think that's roughly  
25 what Dr. Stein's analysis suggests.

1           Q. (BY MR. GOLANDO) Would you based on your  
2           experience as an expert and a observer of SBISD  
3           elections in your 20 years here and your prior  
4           engagement do Latinos support different candidates than  
5           Anglos in SBISD elections?

6           A. Sometimes.

7           Q. How often?

8           A. I don't know how often, but it certainly  
9           happens.

10          Q. Can you recall a time when they didn't based on  
11          your analyses and your expertise?

12          A. I don't know. I mean, I can't think of a  
13          specific -- a specific example, but I -- but I'm not at  
14          all sure that that is -- that it's generally the case  
15          across elections that -- in fact, I suspect it's not.  
16          My guess is that there are elections in which both  
17          Anglos and Hispanics are supporting the same candidates,  
18          but I don't -- again, I -- I don't know for certain, but  
19          that's my guess.

20          Q. Okay. I understand. We're going to talk a  
21          little bit about Bob Stein now. Do you know Professor  
22          Stein?

23          A. I do.

24          Q. How do you know him, sir?

25          A. He hired me to come to Rice. He had been at

1 University of Georgia before I came to University of  
2 Georgia. We didn't actually overlap, but I had had  
3 conversations with him. At that point prior to -- to  
4 actually working with him I had met him at a convention.  
5 And he's the one who at that time was the -- I can't  
6 remember if he was the -- I think -- yeah. He was the  
7 department head at that time. Georgia actually tried to  
8 hire me twice. And the first time -- my former mentor  
9 from U of H, David -- Dr. David Brady was the chair, and  
10 he had contacted me and tried to work out a deal to get  
11 me to come to Rice. And I really wasn't -- I hadn't  
12 been at Georgia very long, and I wasn't ready to go. So  
13 I ended up turning it down, and he was very unhappy  
14 about that. And then a year later circumstances had  
15 changed. I was in the middle of a divorce.

16 **Q. I'm sorry.**

17 A. I was not very happy with my colleagues at the  
18 University of George. And by then Dr. Stein was the  
19 chair. And so he called up and said, you know, "We  
20 would like you to come to Rice." And I said, you know,  
21 "I'm not a very good negotiator, so whatever you offer  
22 me I'm going to take it." And he said, "I'm not a good  
23 negotiator either because whatever you want we'll give  
24 it to you." And so we then worked out something that  
25 sort of fell within those -- within that range, and I

1 was hired. And David Brady never forgave me for  
2 allowing Stein to outhire him on the recruiting front.  
3 So -- but I've known him since I -- I knew him before I  
4 came to Rice, but certainly since I came to Rice, and  
5 we're -- we've always been close colleagues. We're  
6 close personal friends. Our families are friends. He  
7 was just having dinner with my daughter in Washington,  
8 D.C. over the weekend.

9 **Q. Oh. Wow.**

10 **A. So we remain very close.**

11 **Q. Do you know his reputation as a scholar?**

12 **A. Yes.**

13 **Q. What is his reputation as a scholar?**

14 **A. It's a excellent rep -- he's very prolific.**  
15 **He's very well-respected. He's moved around across a**  
16 **variety of areas in his career and always had -- the**  
17 **areas he's worked in has always ended up being important**  
18 **work, widely recognized work, so --**

19 **Q. How would you personally rate him as a scholar,**  
20 **Professor Stein?**

21 **A. On a -- what are we doing here? A scale of one**  
22 **to ten or --**

23 **Q. Is he an expert in his studies?**

24 **A. Yes.**

25 **Q. Okay. Is he -- is he at the top levels of his**

1 **scholarly research?**

2 A. I would say in the areas that he works in he  
3 always ends up producing work that is among the best of  
4 the work that's done in that area. So I would say that  
5 both -- when he was doing things like the distribution  
6 of federal funds, pork barrel, his more recent work on  
7 things like ballot form and access, that sort of stuff,  
8 again very -- he does very good, very high quality work.

9 **Q. Would you call him an expert in social science**  
10 **statistical research?**

11 A. That's a time-bound question. So when I came  
12 out of graduate school Stein and I both would have been  
13 experts in statistical social science research. We were  
14 like go-to people. We were, you know, the young Turks  
15 and, you know, drove all our old professors crazy by,  
16 you know, asserting they had no clue what they were  
17 doing and we did. But those things change over time.  
18 So, you know, he's a -- he's a extremely competent data  
19 analyst and is I -- I would say among people who are not  
20 actually political methodologists he's -- is as skilled  
21 as anybody doing work in social sciences today. But  
22 he's -- political science didn't really have  
23 methodologists when he and I came out of graduate  
24 school. And now we have -- we have people in our  
25 department who we hire as methodologists. They only

1 teach methods. They only research methods. We're not  
2 in that category. Neither of us are methodologists in  
3 that sense. We're not going to develop the next --  
4 we're not Gary King --

5 **Q. Right.**

6 A. -- which is -- I guess you could say for pretty  
7 much everybody in the United States. But he  
8 certainly -- he employees up-to-date methods, and he  
9 does them accurately and skillfully for the -- for his  
10 research question. But he's more interested in  
11 answering a research question than he is in developing a  
12 methodology.

13 **Q. I don't blame him. Do you agree that Bob**  
14 **Stein's expert opinion is relevant to the task at hand?**

15 A. Yes.

16 **Q. Okay. Would you agree that racially polarized**  
17 **voting analyses using ecological regression rest on**  
18 **scientifically reliable foundations generally?**

19 A. Yes.

20 **Q. Would you call Bob Stein an expert or a top**  
21 **scholar in analyzing voter behavior?**

22 A. Yes.

23 **Q. Are you familiar with the use of ordinary least**  
24 **squares?**

25 A. Oh, yes.

1           **Q. Yeah. Me too.**

2           A. My -- the professor who taught me methods at  
3 university of Iowa said, "By the end of this course  
4 you'll not only recognize that OLS is the superior  
5 research method, you'll also recognize that it's a way  
6 of life and will be the only thing you dream about."  
7 And I thought that was an exaggeration, but I  
8 honestly -- it is an approach to life. You know, life  
9 is about trying to understand the world around you. And  
10 to this day when I'm -- when something puzzles me, like  
11 the behavior of one of my daughters for example, I  
12 actually like find myself unable to not think of it as  
13 an OLS equation. So, yes, I -- I worship at the alter  
14 of ordinary least squares regression.

15           **Q. Me too. I do. And I remember my scopes and**  
16 **methods class. I know exactly how you feel.**

17                       **So is ordinary least squares a**  
18 **scientifically verifiable way to evaluate racially**  
19 **polarized voting?**

20           A. Yes.

21           **Q. Okay. Is OLS a technique generally accepted in**  
22 **the social scientific community?**

23           A. Yes.

24           **Q. Has OLS analysis been subjected to peer review**  
25 **and publication?**



1 A. Yes.

2 Q. Okay. Can OLS be tested and verified?

3 A. Yes.

4 Q. Does OLS have a known error rate?

5 A. It -- assuming you meet the assumptions of OLS  
6 it is -- what's called a BLUE method is the best linear  
7 unbiased estimator. So -- but that means you have to  
8 meet the -- the basic assumption. So, yes, it's --  
9 there is a way to test the accuracy. OLS provides  
10 measures of the stability and usability of its results.  
11 But like any technique they do depend on meeting the  
12 assumptions.

13 Q. Do you believe that Dr. Stein is an expert  
14 qualified by knowledge, skill, experience, training, and  
15 education?

16 A. Yes.

17 Q. Do you believe that Dr. Stein's opinion is  
18 based on sufficient data?

19 A. So we're getting into the crux of things here.  
20 I think the -- I think the data he has is probably  
21 enough to answer the question. I don't think it's  
22 necessarily the best data he could have. But I don't  
23 think the -- and I don't -- I don't disagree with the  
24 results of the analysis he did as it is, but I don't  
25 think -- I don't think it's sufficient to answer at

1 least some of the questions that routinely have to be  
2 answered in my view in a full racially polarized voting  
3 analysis.

4 Q. I want to be very clear. We'll get to see your  
5 problems with the Stein report in a moment. I promise  
6 you. But does the data he used, is it sufficient to  
7 determine the outcome?

8 A. I think the -- yes, I think so.

9 Q. Do you believe that Dr. Stein's opinion is the  
10 product of reliable principles and methods?

11 A. Again, I don't want to over endorse or under  
12 endorse. There's -- yeah, I think he's running OLS  
13 correctly. I don't doubt that those are the right  
14 parameters coming out of OLS. I -- I just think it's  
15 not -- the data has been aggregated in a way that I  
16 think is -- I have questions about the way the data has  
17 been aggregated. I have questions about the quality of  
18 the input data on the demographic side, the BISG result,  
19 and I have questions about at least some of the ways in  
20 which election result data was treated. So I don't  
21 exactly -- it's not the data itself that's problematic,  
22 but the way -- you can't divorce that from the way it's  
23 been aggregated for input into the -- into estimation.  
24 And I think that's where -- where we have disagreements.

25 Q. I think that's a reasonable thing to say. Do

1 you believe that Dr. Stein has applied the principles  
2 and methods reliably to the facts of the case? You may  
3 disagree. But has he done so reliably?

4 A. So it's interesting how certain things come  
5 back routinely in depositions. So within the narrow  
6 meaning, the narrow statistical meaning of reliability,  
7 yes.

8 Q. Perfect answer. I appreciate it. All right.  
9 Let's talk about racially polarized voting generally,  
10 and then I promise you we'll get to your words. I  
11 promise. I just want to make sure --

12 A. It's fine with me if we don't.

13 Q. Because I think primaries are important. And,  
14 again, if I ask you a question that doesn't make sense  
15 it's not your fault. It's my fault. Okay?

16 If 90 percent of Latino voters voted for  
17 one candidate, are they politically cohesive together in  
18 a given jurisdiction?

19 A. Yes.

20 Q. Okay. If 80 percent of Latino voters voted for  
21 one candidate, are they politically cohesive together?

22 A. Yes.

23 Q. Okay. If 70 percent of Latino voters voted for  
24 one candidate, are they politically cohesive together?

25 A. I don't know. I mean, that's where I would

1 start -- because, again, "cohesive" is a -- is not a  
2 binary term. Cohesive is a -- is a term that's being  
3 applied to what is, in fact, a continuous measure from  
4 zero cohesion to perfect cohesion. And so if a measure  
5 goes from no cohesion to perfect cohesion there's always  
6 a question of "what do people mean by cohesion?" And I  
7 know some people mean by cohesion anything other than  
8 zero, which means actually by definition in virtually  
9 every election in the United States every group is  
10 cohesive. I take that to be a nonsensical -- I know  
11 that I'm in the minority here of my -- at least some of  
12 the experts. But I take that to be nonsensical with  
13 regard to providing that information to the court  
14 because -- because the court has said that Gingles 2 is  
15 a threshold test. And if the threshold is by definition  
16 always met then it doesn't belong in the Gingles -- it's  
17 not a threshold at all. It's not even a test. There's  
18 no reason -- there's no reason to even have it there.

19 So, you know, we can go down that slippery  
20 slope. And you know, we can start at 50 percent, which  
21 is zero cohesion. We can start at 100 percent, which is  
22 perfect cohesion. And then the question is sort of  
23 where does -- where does cohesion fall on that scale.  
24 And I don't believe it's the entire scale. So one way  
25 of thinking about that is this -- this actually isn't a

1 scale from 50 to 100, of course, because 50 would  
2 suggest half cohesion, and it's zero. So turn it into  
3 what it really is, is zero to 100 scale. And in that  
4 zero to 100 scale 75 is actually at 50 percent cohesion.  
5 It's half of the values are less cohesive. Half would  
6 be more cohesive. So that's a kind of midrange of  
7 cohesion, and so that's sort of roughly -- in my view  
8 roughly you clearly have cohesive behavior at sort of  
9 80 -- 75, 80, 90 percent. But the question of what you  
10 have at -- once you get to something like 70 or 60 or  
11 51, I mean, I just think you're -- again, the court has  
12 provided exactly zero guidance here. So I just try to  
13 be careful in the use of the language. So I think at 70  
14 you're starting into a -- you're getting into a range  
15 where you might say there's -- we talked earlier on  
16 things like modest or moderate cohesion. So there's  
17 some moderate level of cohesion there. And I think  
18 that's -- sort of in that 60 to 70 percent range is what  
19 I think of as moderate or modest cohesion. Below 65,  
20 certainly below 60, I don't really think that's -- if  
21 that's cohesion, then, again, it doesn't -- in a Gingles  
22 2 sense then cohesion doesn't matter because cohesion is  
23 always greater than 50 so --

24 Q. So just to be clear, so from 60 to 70 it's  
25 moderate cohesion? Sixty to 75. I don't want to

1 **misstate --**

2 A. Yeah. Well, yeah, I mean, it's -- in that sort  
3 of middle range I think the -- the question, again, it's  
4 very -- it's not hard to see. So I don't think many  
5 people would dispute that 80 to 100 is cohesion. And in  
6 that sense if you were going to make it symmetric then  
7 50 to 70 would be noncohesion. Right? So if the upper  
8 20 percent is clearly cohesion then the lowest possible  
9 20 percent, if you're going to have a scale that  
10 balances in a -- you know, in a kind of a normal sort of  
11 scale sense, then you could describe everything below 70  
12 as not cohesive and -- and sort of, you know, kind of --  
13 then you'd have kind of a middle range in there  
14 somewhere.

15 **Q. If 70 percent of the Latino community supports**  
16 **a candidate, that means that 30 percent didn't, correct?**

17 A. Correct.

18 **Q. So two-to-one?**

19 A. Yep.

20 **Q. More than two-to-one really, right?**

21 A. (Moving head up and down.)

22 **Q. And that's still not cohesive enough from your**  
23 **perspective?**

24 A. It's -- again, it's -- I don't know what you  
25 mean by "cohesive enough." But I don't think it's

1 helpful given the nature not only of what the court  
2 is -- so there are two questions here I think. I mean,  
3 one is is it cohesive enough to clear the threshold  
4 test? And that's -- then there's another question  
5 because, of course, racially polarized voting enters  
6 twice, one is in its mechanical Gingles 2 and 3, and  
7 then again in the totality of the circumstances. And  
8 while I don't think those should be -- given their  
9 proximity to each other I think it's inefficient to have  
10 them mean different things. I'm aware that the -- from  
11 cases I've been involved in that currently there are a  
12 lot of judges who want to make those two very different  
13 things, the Gingles 2 and 3 racially polarized voter,  
14 and the totality of circumstances racially polarized  
15 voting. You know, whatever the judges want to do I'm  
16 fine with. I give them the information. They make  
17 sense out of it.

18 But I think it's an awkward situation both  
19 in terms of analysis and in terms of the law to say that  
20 they're both -- we're going to call both of them  
21 racially polarized voting, but they're going to be  
22 defined in very different ways and very different  
23 implications. So I just think if the Gingles 2 test  
24 is -- are minority voters voting cohesively then that's  
25 either going to need to be defined as in are they a

1 majority or not a majority. That's the dichotomy, and  
2 because it's a dichotomy it has a bright line. That's  
3 the great thing about dichotomies: "yes" or "no." If  
4 this is a "yes" or "no" question, then where is the --  
5 where does the -- where does the "no" become a "yes"?

6 **Q. Fair enough.**

7 A. And so I think -- my preference because I'm not  
8 making that legal decision, it's not up to me to say --  
9 I'm always getting pressured, you know, "but you're the  
10 expert, so in your expert opinion is this legally" --  
11 you know, "is this cohesive voting"? I just want to  
12 tell the court how cohesive the voting is from zero to  
13 100. Right? And if you want -- you want to force me to  
14 put a term on it then in the middle I can put a term  
15 like "moderate" or whatever. And then if the judge  
16 thinks -- the number is still there. In your example  
17 the 70 is there. If a judge thinks that's what -- what  
18 the court means by cohesive voting, have at it. I'm  
19 glad I don't have to make that decision.

20 **Q. Me too, for the record. And I want to be very**  
21 **clear. I'm not interested in your legal opinion. I**  
22 **mean, I am generally. You're a nice guy. You're a**  
23 **smart guy. But for the testimony I'm only interested in**  
24 **your expert opinion as a social science researcher. And**  
25 **I think I understood your question so -- or your answer**



1 to my bad questions.

2 I'm asking the same questions about Anglo  
3 voters because I wonder if there's a difference in your  
4 mind. If 90 percent of Anglo voters support one  
5 candidate, are they politically cohesive?

6 A. Yes.

7 Q. Eighty percent?

8 A. Yes.

9 Q. Seventy percent?

10 A. I think you're getting -- again, now you're in  
11 a range where they're sort of what you might describe as  
12 modest or moderate cohesion. It's certainly in that --  
13 in that kind of range. And I think that's where -- if  
14 you think about sort of functional definition kind of  
15 thing, what's going on here, there it becomes clear the  
16 two things are interacting with each other. Right? And  
17 that's what I think is both important to recognize, but  
18 also I think problematic in the sense that -- on the --  
19 on the Gingles 2 side there's just this question of  
20 minority cohesion. On the Gingles 3 side there's  
21 minorities voting or majorities voting cohesively so as  
22 to usually defeat. Well, so as to usually defeat the  
23 level then of what would be defined as majority cohesion  
24 is going to be on a sliding scale depending on minority  
25 cohesion.

1           And weirdly enough it's going to slide in  
2     the direction that the less cohesive minorities are the  
3     more likely it is that at the same levels of cohesion  
4     majorities are voting cohesively to defeat the preferred  
5     candidate. If the preferred candidate is only getting  
6     51 percent of the vote, then a majority that's in fact  
7     splitting its vote almost perfectly evenly can still be  
8     sufficiently cohesive to defeat the candidate. So this  
9     is a weird scale in which as -- the further away we move  
10    from racially polarized voting the easier it is to find  
11    racially polarized voting in that sense because, again,  
12    these are -- in essence they are no longer -- they're no  
13    longer absolute -- again, a threshold test must mean  
14    that you can -- that you can in isolation answer that  
15    question. And judges in my experience frequently join  
16    two and three together to ask what they call the -- the  
17    Gingles 2 and 3 are the racially polarized voting  
18    question. Once you join them together they are not  
19    threshold. Two is not a threshold test if it doesn't  
20    stop the inquiry at two.

21           **Q. I understand.**

22           A. And so I don't have the solution to that issue,  
23     but it is problematic. And so that's why I think it's  
24     better to be imprecise in the language about -- about  
25     calling something cohesion or not cohesion. It's better

1 to be imprecise about that and to just look at exactly  
2 how all that's operating and then think about what that  
3 means because ultimately, you know, Gingles 1, 2, and 3  
4 is about determining if there's a solution in order to  
5 answer the question about whether there's a tort. And  
6 thinking about the solution is where you really do have  
7 to take it all into account because if cohesion is  
8 really low on the part of minorities then if -- if it's  
9 also the case that it's very difficult to get a district  
10 that's above majority, then the district is not going to  
11 be a district that's typically going to work. Right?  
12 It isn't going to solve the -- it isn't going to solve  
13 the problem. Fifty percent plus one voters lets you  
14 control the district as long as you're perfectly  
15 cohesive. Well, if your cohesion level is 52 percent,  
16 the district isn't going to do anything. Right? It's  
17 going to give you 25 percent of the vote. It's not  
18 going to win anything. It's not a solution to the  
19 problem. And, in fact, the problem is not the drawing  
20 of district lines. Right? The problem was very low  
21 cohesion. You know, splitting your vote doesn't let you  
22 control politics. And so that's -- that's my short  
23 answer.

24 Q. Fair enough. All right. Let's talk a little  
25 bit about racially polarized voting. We've talked a lot

1 about it already, but I want to make sure I get you on  
2 the record.

3 What do you believe racially polarized  
4 voting is, and how would you define it?

5 A. So I would define racially polarized voting as,  
6 in the broadest sense, as a situation where -- where  
7 voting is being affected by racial considerations at a  
8 level that -- you know, given the -- the sort of  
9 numerical conditions and sort of things you assess in  
10 Gingles 1, that you have a situation where minorities  
11 are not able to elect minority candidates in a  
12 particular setting and would be able to in the --  
13 whatever the legally available alternative settings are.

14 Q. I think I understand that. So I'm going to ask  
15 you a couple of general questions about that, if you  
16 don't mind.

17 If 90 percent of the Latinos support  
18 candidate A and 75 percent of the Anglos support  
19 candidate B in the same race, is that racially polarized  
20 voting, assuming your -- your first part of your  
21 definition?

22 A. This is where -- I know you're going to be  
23 happy to hear this. But I don't think you can determine  
24 if voting is racially polarized in a single election.  
25 You can say the election is compat -- that's an election

1 that's compatible with -- with the existence of racially  
2 polarized voting, but I don't think it establishes  
3 racially polarized voting. And I don't think it's  
4 really -- you can given that -- if that's the fact  
5 pattern, I got one election in that fact pattern, I have  
6 no idea if voting in that jurisdiction is racially  
7 polarized or not. All I can tell you about is that  
8 one -- is that one election.

9 **Q. That one election is certainly racially**  
10 **polarized, correct?**

11 A. The election?

12 **Q. There's -- I'm sorry. I don't want to**  
13 **mischaracterize your testimony. I think you said there**  
14 **was -- it would be an example of racially polarized**  
15 **voting. Correct?**

16 A. So the election is compatible with racially  
17 polarized voting because I think it's important that  
18 when we -- when you characterize voting in an area  
19 that's racially polarized, you're -- you're  
20 characterizing the behavior of the voters over -- over a  
21 set of elections and over a type of election stimulus.  
22 And so I think it's -- it isn't a characteristic of the  
23 election. It's a characteristic of the voters. So I  
24 think that -- we don't know if that is an appropriate  
25 characterization of what the voters do in that -- in

1 that election. I mean, just for example, if that's a --  
2 you know, if that's a general partisan election between,  
3 you know, two Hispanic candidates, one Democrat and one  
4 Republican, I don't think that's racially polarized  
5 voting.

6 **Q. Right.**

7 A. But it has -- the election has those features.  
8 So, again, it's -- it's not an election that would stand  
9 as obviously incompatible with racially polarized  
10 voting, but I -- in and of itself that doesn't tell you  
11 either that the election is racially polarized or that  
12 the voters are behaving in a fashion compatible with  
13 racially polarized voting.

14 **Q. So imagine that election, same thing happens**  
15 **five elections in a row. Is that racially polarized?**

16 A. Again, if -- if you're saying that that happens  
17 five times in a row -- and, again, I'd want to know what  
18 the -- you know, I want to know the race of the -- or  
19 ethnicity of the candidates.

20 **Q. Fair enough. So let's say Latino candidate A**  
21 **is Latino, Anglo candidate B is Anglo, these are**  
22 **nonpartisan elections, it happens five times in a row.**  
23 **Is that racially polarized voting?**

24 A. Assuming that the -- assuming that the -- that  
25 the Hispanic candidate -- that the Hispanic candidate,

1 who is also the Hispanic preferred candidate, is being  
2 defeated, in most of those elections then I think that's  
3 a sort of a -- a nice little set piece for what racially  
4 polarized voting looks like.

5 **Q. Same question, same assumptions, please. For**  
6 **90 percent support of Latinos for the Latino candidate,**  
7 **and 65 percent support for Anglos, and this outcome is**  
8 **the same?**

9 A. Outcome is the same I think the -- yeah, the  
10 result is the same.

11 **Q. And that would be racially polarized voting,**  
12 **correct?**

13 A. Yes.

14 **Q. Fair enough. In your time as a litigation**  
15 **expert and a social scientist, do you agree that**  
16 **Hispanic surname candidates are the likely preferred**  
17 **candidate of choice for Latino voters? Likely.**

18 A. Well, I'd want to qualify it a little bit  
19 because --

20 **Q. Sure.**

21 A. -- in my experience in modern U.S. elections  
22 that depends entirely on which party that candidate is  
23 running under.

24 **Q. Let's assume --**

25 A. Ted Cruz is not the choice of Latino voters in

1 Texas.

2 **Q. No.**

3 A. But that's a different topic. And that's not  
4 just for Ted Cruz. Right? It's just -- there are lots  
5 of -- Texas has lots of Republican Hispanics, and when  
6 they run as Republicans they do not get the majority of  
7 the Hispanic vote. When they run as Democrats, they get  
8 the majority of the Hispanic vote. And when they run  
9 against Anglos as -- and when Hispanic Republicans run  
10 against Anglo Democrats the Anglo Democrats gets the  
11 majority of the vote. So in partisan elections it's not  
12 the case, no longer the case -- it may well have been  
13 the case in the past -- but it is no longer the case in  
14 the sort of current polarized atmosphere that the race  
15 of the candidate for either co-ethnics or for -- for  
16 nonethnic groups is -- is the determinative factor in  
17 voting behavior.

18 **Q. How about in nonpartisan races, like the SBISD**  
19 **race?**

20 A. I'd say in nonpartisan elections it's -- it's  
21 certainly variable depending on the -- you know, the  
22 area of the country and -- and some local factors. But  
23 there I think you're -- it's more often the case there  
24 that you would see Hispanic voters preferring Hispanic  
25 candidates.



1 Q. In Texas and SBISD, correct?

2 A. I think that's -- I think that's a fair  
3 statement. Yeah, I would -- that's what I would expect  
4 to see if I was coming in novel into some area. That  
5 would -- it wouldn't necessarily be the case, but it's  
6 what I would expect to be the case.

7 Q. And that's what you did see when you did your  
8 OLS report and your EI report, correct?

9 A. I'm not a hundred percent sure.

10 Q. Well, I don't want you to speculate. If you  
11 don't recall, you don't recall.

12 A. Yeah.

13 Q. All right. Let's talk about your great report.  
14 I'm going to hand you a copy of it. I think I've  
15 labeled it as Exhibit No. 2. Could you review this and  
16 make sure that it's authentic?

17 A. This looks like it.

18 Q. That's your expert report, correct?

19 A. Yes.

20 Q. Okay. And we've labeled that Exhibit 2. In  
21 preparation for your report, other than reviewing the  
22 data provided by the plaintiff did you review anything  
23 else?

24 A. So I reviewed the data. I reviewed the --  
25 Dr. Stein's report itself. I looked at several of the

1 articles that he had cited. I looked at a couple of  
2 other things that I provided you here that are sort of  
3 things that came to my attention as a result of looking  
4 through the things in his report, one being this kind of  
5 a general statement from a group in California about the  
6 use of at-large elections and its effect on Latino  
7 representation, and the other being something from the  
8 Texas Republican Party about the -- essentially  
9 injecting -- deliberately injecting partisanship into  
10 nonpartisan elections.

11 **Q. That's the totality of what you -- all those**  
12 **documents form the basis of your report, correct?**  
13 **That's the totality?**

14 A. It's everything I recall. We get into  
15 specifics and I recall something else I'll -- I will  
16 let you know, but that's what I recall.

17 **Q. I appreciate it. In preparation for this**  
18 **report, did you do any -- did you review any survey**  
19 **data?**

20 A. No, I don't think so.

21 **Q. Did you perform a survey about voter behavior**  
22 **in SBISD?**

23 A. No.

24 **Q. Okay. For this report did you do an ecological**  
25 **regression analysis or EI or any kind of a OLS?**

1 A. No.

2 Q. Okay. For this report did you analyze election  
3 returns in SBISD elections?

4 A. No.

5 Q. For this report did you review campaign finance  
6 data?

7 A. No.

8 Q. Did you for this report -- did you analyze  
9 incumbency advantage for this report?

10 A. No.

11 Q. For this report did you analyze any of the  
12 issues that form the basis of the campaigns themselves?  
13 By which I mean policy issues.

14 A. No.

15 Q. Did you analyze any partisan data for this  
16 report?

17 A. No.

18 Q. Okay. Did you look at ballot drift and how  
19 that would have affected outcomes?

20 A. No.

21 Q. Did you look at ballot formation and how that  
22 would have affected outcomes?

23 A. No.

24 Q. Did you look at any kinds of early vote  
25 patterns or precinct data associated with elections, for

1 SBISD elections, in formation of this report?

2 A. Other than what's provided by Dr. Stein, no.

3 Q. Okay. I have asked this before, but I want to  
4 make sure that I'm clear. In your -- in preparation for  
5 your report, did you perform any independent racially  
6 polarized voting analysis?

7 A. No.

8 Q. Okay. How long did it take you to review the  
9 data?

10 A. I don't know. I have a -- I have a billing  
11 spreadsheet someplace. I could give you -- I could give  
12 you a very precise, down to a tenth of an hour, but I  
13 don't -- I don't recall offhand.

14 Q. Was it 10 hours?

15 A. I -- I really have -- as you might, as you  
16 probably -- it's that time of year. I'm working on a  
17 dozen cases simultaneously so I don't --

18 Q. Me too.

19 A. Yeah. I -- at some point those -- you know,  
20 I'll hit, you know, some at the bottom of a spreadsheet,  
21 and I'll know how much time I spent. I saw a report --  
22 I just looked at a -- some disclosure from another  
23 expert in Kansas. It was a guy I know at University of  
24 Michigan. And he was hired and provided a report for  
25 him two weeks later, along with a bill for \$63,000. I

1 thought I'm doing something wrong because I know he's --  
2 I know he's working for at least a dozen people because  
3 I see his name all the time. And, my God, I -- you  
4 know, whenever I hit "add" it never adds up to anything  
5 like that in a two-week period. That's pretty -- that's  
6 pretty astonishing. So I can tell you this. I know  
7 when I saw that I was shocked, so I know it's less than  
8 \$63,000 worth of my time.

9 **Q. How much of the report did you write?**

10 A. I wrote the entire report.

11 **Q. Mr. Crawford and none of the lawyers wrote the**  
12 **report for you?**

13 A. That's correct.

14 **Q. These are your words, these are your findings,**  
15 **correct?**

16 A. My words, my findings.

17 **Q. And you didn't use a data assistant to review**  
18 **the data?**

19 A. No, I did not.

20 **Q. And you didn't use Mr. Stevenson? I'm not sure**  
21 **if I'm getting the name correct.**

22 A. Stevenson.

23 **Q. Okay. It's Dr. Stevenson I suppose?**

24 A. Yes. I did not -- Dr. Stevenson was not  
25 involved.

1 Q. This is 100 percent your work product?

2 A. Correct.

3 Q. Yes, sir. What instructions were you given by  
4 counsel in preparation of the report?

5 A. You know, we discussed at the time we were  
6 negotiating my employment, you know, what -- what I  
7 could do for Mr. Crawford in this case, which was to,  
8 you know, provide a commentary on Dr. Stein's report and  
9 Dr. Stein's analysis. And that was -- that was the  
10 extent of the discussion so --

11 Q. And this is an obvious answer, but I need to  
12 ask it anyway. You've reviewed Dr. Stein's report,  
13 correct?

14 A. Correct.

15 Q. Okay. I've previously labeled this Expert  
16 Exhibit No. 3. Could you review this, make sure that's  
17 the report you reviewed?

18 A. Yes, that's the report I reviewed.

19 Q. Make sure that's handy in case you need to  
20 refer to it.

21 A. Okay.

22 Q. So just generally first before we get into your  
23 specific points, do you disagree with any of the data  
24 that was used by Professor Stein in his expert opinion,  
25 the data itself?

1           A. I don't have any reason to disagree with the  
2 election data, the results by election place. I -- I'm  
3 uncertain of what to make exactly of the BISG analysis.  
4 I'm not sure if I agree with it or don't agree with it.  
5 I may completely agree with it, and I may completely  
6 disagree, but I can't quite figure out -- there's sort  
7 of different forms of it that are being used there.  
8 It's not a hundred percent clear to me what the  
9 distinction is or how that's being utilized. But I --  
10 in terms of the -- how that leads the -- the voting  
11 places to be, roughly to be arrayed, to the extent I can  
12 see that, it's -- it's not obviously backwards or  
13 anything like that. I'm not sure that it's a -- it's a  
14 very precise way of measuring the proportion of Hispanic  
15 voters at the polls, but it doesn't -- to the extent I  
16 can see that pattern in the scatter plots it's not -- I  
17 don't think it's -- in its rough direction it's not  
18 incorrect. So it's -- in that sense I think it's  
19 accurate enough for the kind of analysis he did to  
20 reach -- reasonably, reliably reach a kind of narrow  
21 conclusion about this kind of mass of elections.

22           **Q. I understand. And it's not inconsistent with**  
23 **the OLS that you ran and the EI that you ran, correct?**

24           A. It's not inconsistent. It's not inconsistent  
25 with my view of what you would likely see if you did

1 what he did. So I guess it's not inconsistent with -- I  
2 don't think it demonstrates in an appropriate manner  
3 that there is legally significant racially polarized  
4 voting in SBISD, but it's a finding that certainly is  
5 not incompatible with that.

6 Q. And it's not incompatible with the EI that you  
7 ran or the OLS that you ran previously, correct?

8 A. I didn't -- nothing in it surprised me. I'll  
9 say that.

10 Q. I understand. Do you agree that Bob Stein's  
11 expert report and the methods he used demonstrate  
12 racially polarized voting just generally?

13 A. I don't know.

14 Q. Okay.

15 A. Again, it's not inconsistent with that, but I  
16 don't know that it actually demonstrates that.

17 Q. I'm not talking as a legal matter. I'm talking  
18 only as a social scientific matter.

19 A. I just don't know.

20 Q. Okay.

21 A. It's really hard to say. It's a -- it's a very  
22 scattered set of data, and it's a very unusual set of  
23 data. It's just hard to say what it demonstrates. I'm  
24 really not -- it's not clear to me what it demonstrates.

25 Q. But you would agree that the slopes of the line



1 are inverted, correct?

2 A. Yes.

3 Q. And that those slopes are generally consistent  
4 with racially polarized voting, correct?

5 A. They're in the correct direction.

6 Q. Okay. What is a p-value?

7 A. A p-value typically is a -- it gives you a  
8 probability. So it's, you know, a probability that some  
9 value is, and in comparison to some null hypothesis,  
10 that it's, you know, within some appropriate range of  
11 that -- of that value. So, I mean, that's -- depending  
12 on what statistic you're talking about it's a -- you  
13 know, it's a probability.

14 Q. Would a layperson call that statistical  
15 significance?

16 A. They might. So p-value underlies what we call  
17 statistical significance, which requires a null  
18 hypothesis. It also underlies what you call a  
19 confidence interval. Sometimes people are more familiar  
20 with that.

21 Q. Sure.

22 A. That doesn't require a null hypothesis. That  
23 just talks about, you know, plus or minus around a --

24 Q. Yeah.

25 A. -- a predicted value.

1           Q. Would you agree that Dr. Stein's report shows  
2           statistical significance, that his findings are  
3           statistically significant?

4           A. He reports -- he reports a number that by  
5           social science standards would typically indicate  
6           statistical significance.

7           Q. A perfect answer. I appreciate that.

8           A. Okay.

9           Q. Okay. Do you agree with Professor Stein that  
10          his findings show that voting is racially polarized in  
11          SBISD elections? Do you agree?

12          A. No.

13          Q. Okay. Why don't you agree?

14          A. I just don't think it's -- well, for several  
15          reasons. One is going back to the -- to the statistical  
16          significance. OLS is not a technique, nor is  
17          correlation that can generate an appropriate measure of  
18          statistical significance for ecological analysis.

19          Q. Okay.

20          A. So that's a well-known -- that's going all the  
21          way back to its very origins. Bernie Grofman has  
22          written some articles about this. There just isn't an  
23          appropriate method for deducing that from OLS with --  
24          with ecological data as opposed to with actual  
25          individual level data. So we just have to be -- we can

1 report -- it's not that OLS doesn't produce that  
2 estimate. It's just that that estimate is not an actual  
3 estimate given the nature of the data. And so it's --  
4 you can't rely on it in the sense that if it's, you  
5 know, something significant to the 0.05 level, with --  
6 where that 0.05 estimate comes out of OLS it does not  
7 mean that you would expect that result -- you know, that  
8 you're in that 95 percent confidence interval or  
9 whatever. That's just not true. There are lots of  
10 studies that are looked at that said, you know, you can  
11 do this kind of analysis, and it shows that, you know,  
12 like 95 percent of the results are in fact nowhere near  
13 the confidence interval. It just doesn't -- it  
14 doesn't -- it's not mathematically correct, and it in  
15 practice doesn't work. So we -- that part we don't --  
16 we don't know about, so we can't tell whether --  
17 whatever the pattern is here we can't tell whether it's  
18 actually statistically significant or not.

19 We're also mixing data from a lot of  
20 different elections, and within those elections a lot of  
21 different conditions. So at least the best I can  
22 understand it in some of these elections there is only  
23 one candidate and -- and we're mixing sort of a vote for  
24 the candidate with rolloff, or something, as a vote for  
25 the noncandidate. It's not the same thing as voting for

1 another candidate. And then we're sort of over a span  
2 of time and over a series of candidates we're -- we're  
3 sort of putting all that together into one -- one giant  
4 OLS analysis. And -- and we're not actually looking at  
5 the cohesion for the preferred candidate or the voting  
6 against the preferred candidate by the majority. The  
7 candidate it's already been defined as the candidate  
8 with a Hispanic surname. And that's just -- that's just  
9 not the right way to do this.

10 **Q. Okay.**

11 A. I mean, it's important to have -- I think it's  
12 important to include information about the ethnicity of  
13 the candidates, particularly to have a mix -- it's  
14 useful to have a mix of races that are ethnically  
15 contested and races that aren't. But the -- ultimately  
16 the issues is the -- is voting for the candidate  
17 preferred by minorities, not for the assumption that  
18 that's the candidate who is, in fact, an ethnic  
19 minority, or in this case who has a minority surname but  
20 may in fact not be of that ethnicity at all.

21 And so, again, I think that's -- it's not  
22 to say that with all of that that this isn't compatible  
23 with an analysis that would show -- show that done in  
24 what I think is a more appropriate way, but in and of  
25 itself it's also compatible with a lot of other things.

1 So I just don't know what to -- it's not the way this is  
2 usually done and I -- that doesn't -- you know, the way  
3 things are usually done doesn't always mean it's the  
4 right way or the best way or even a better way to do  
5 things. But in this circumstance I think it attempts to  
6 ask too much in a single analysis when a more discrete  
7 analysis would solve almost all those problems and be a  
8 clearer result.

9 Q. So if he did an ecological inference for each  
10 of the races that would be preferential, that would be  
11 what you preferred, and --

12 A. Yes.

13 Q. -- that would solve the problems you --

14 A. All those problems would be solved. If you  
15 just do that for all the elections, you'll have  
16 elections you'll be able to decide who the preferred  
17 candidate is rather than assuming it. You'll then be  
18 able to look and see was the preferred candidate almost  
19 or always the minority candidate. That's a useful piece  
20 of information in itself. You'll have reasonable  
21 measures of statistical significance that are actually  
22 valid. You know, all sorts of good.

23 Q. So if he did that we might be square, correct?

24 A. Of course I got to look at it.

25 Q. Yeah.

1           A. But, yes, that's -- I mean, that's really my --  
2 my primary criticism here of this is that -- that while  
3 this method is compat -- could be compatible with it, it  
4 could also be showing us something else, and that done  
5 differently we would -- we would be able to deal with  
6 the -- we'd be able to have a shared understanding of  
7 the facts on the ground. And as it is I don't think  
8 that that's really -- it's not clear enough yet in this  
9 analysis.

10           Q. I understand. And you also have two specifics  
11 indicts, if I recall correctly. One is that you believe  
12 he only surveyed specific races, correct?

13           A. My understanding is that he said that he -- he  
14 identified the preferred candidate as the minority, the  
15 candidate with the Hispanic surname.

16           Q. Let me just go to the part of your report where  
17 you reference that, if you don't mind. I'm going to  
18 take a moment. I think you said -- I think this is  
19 on --

20           A. Page 3.

21           Q. Yeah. "Dr. Stein's analysis proceeds by  
22 selecting only contests with at least one candidate with  
23 a Hispanic surname." That's what you wrote, correct?

24           A. Yeah, that was my understanding.

25           Q. If he didn't do that, that wouldn't apply,

1 correct?

2 A. Correct.

3 Q. All right. Fair enough. And then we go -- you  
4 go into I think a really interesting description of R  
5 and R-square. That's the other specific indict you have  
6 about Stein's report, correct?

7 A. Yes.

8 Q. Could you explain the R score and what that  
9 means to the court, please?

10 A. So R is a measure typically -- it's a  
11 correlation measure. It's often called Pearson's  
12 correlation, even though it wasn't actually developed by  
13 Pearson but by Pearson's mentor. And it's a -- it's a  
14 measure that varies between zero and one, with zero  
15 being the absence of relationship between two variables  
16 presumably at least semicontinuous, and at one a perfect  
17 correspondence between the two measures. Unfortunately  
18 in the area in between it's not a linear measure. It's  
19 a curvilinear measure. And so it's really easy to be  
20 deceived by that measure. So an R of 0.5 sounds like  
21 you're halfway between zero and one, but in fact you're  
22 not. An R of 0.5 corresponds to the independent  
23 variable accounting for 25 percent of the variation in  
24 the dependent variable. So through the early part of  
25 that scale you're really, even when you get up to what

1 looked like fairly substantial correlation, you have to  
2 get above 0.7 before you're even explaining half the  
3 variance. And so if you're familiar with it and you use  
4 it a lot, you know, you're capable of kind of making  
5 that mental adjustment. But otherwise it tends to  
6 suggest there's more here than there is.

7 In this case the -- I think the correlation  
8 is something like 0.33, which suggests that it's  
9 accounting for about a third of the variation, when just  
10 the -- you know, sort of the optical statistic, you can  
11 look at this scatter plot, and it's clear that a third  
12 of the variation has not been captured here. And, in  
13 fact, that's where -- again, for ordinary least squares  
14 the -- actually, the correlation is not really what  
15 typically is reported for an ordinary least squares  
16 regression. What's typically reported is the R-squared,  
17 which is the coefficient that tells you what proportion  
18 of the variation in the dependent variable explained by  
19 variation in the independent variable. And that's  
20 important here because that's really what we're -- we're  
21 trying to understand -- you got a variation in the  
22 proportion of voters at the precinct that are Anglo or a  
23 proportion of voters at the precinct that are Hispanic,  
24 and you want to know how much that variation is driving  
25 the election results. And in this case it's driving



1 less than 12 percent of the election result, and 88  
2 percent of this bouncing around is produced by something  
3 else.

4 Q. That's the claim in the report, and I think I  
5 understand that.

6 What level of R-square, if any, should lead  
7 to a conclusion that any model is satisfactory? Is  
8 there a specific level of R-square?

9 A. No.

10 Q. Okay.

11 A. Well, I guess -- I mean, an R-square of zero --  
12 it depends on what you're -- what you want the model to  
13 do.

14 Q. A correlation. You want to prove a correlation  
15 and --

16 A. Oh, a correlation. There are all kinds of  
17 scales of correlation that -- you know, some people say,  
18 like in the social sciences, a -- you know, a  
19 correlation of 0.2 is a pretty good correlation because  
20 a lot of things we do have low correlation. You know,  
21 that's true for a variety of reasons, not the least of  
22 which is extremely poor measurement in the social  
23 sciences but -- so in and of itself there's not --  
24 correlation is not -- it's not providing you a metric by  
25 which you can judge the degree to which your independent

1 variable is -- is impacting the dependent variable. And  
2 so it's -- it is very seldom used in the OLS context  
3 because -- because OLS produces instead the summary  
4 statistic, the R-squared.

5 **Q. I think I understand. What are some of the**  
6 **factors that might explain the variance in R-square on**  
7 **this model?**

8 A. So I think one of the things that probably  
9 explains the low R-squared is that you've thrown  
10 together -- your data points are not really discrete  
11 data points from an event. They're a set of data points  
12 from a whole bunch of events. They're at different  
13 points in time. So normally if we're looking -- again,  
14 if we're looking at a single election, then we could  
15 say, you know, whatever the proportion of explained  
16 variance is that's how much this variable is explaining  
17 about what happened in this election. When you compound  
18 this by throwing a bunch of elections together, you've  
19 got -- some of this trends over time, and some of this,  
20 the very different nature of these elections. Some of  
21 these elections are competitive. Some of them are not  
22 at all competitive. In a noncompetitive election you're  
23 not -- this is not going to explain much in a  
24 noncompetitive election because everybody is going to be  
25 voting the same way. In a competitive election, it may

1 actually be more useful. By separating out the  
2 elections you separate out the context. Right? You can  
3 say, look, it's really explanatory here. Over here in  
4 this election where there was like just a write-in  
5 candidate it doesn't explain much, but we wouldn't  
6 expect it to explain much. So part of the -- part of  
7 the issue here is just there's an artificial increase in  
8 the amount of variance that needs to be explained, and  
9 that's not a necessary -- that's a choice of putting it  
10 all in -- in one picture instead of pulling it out  
11 separately.

12 Q. I think I understand. But as we're sitting  
13 here today you can't explain the variance, what causes  
14 the variance here in this R-square, correct? It could  
15 be incumbency? It could be issues in the campaign like  
16 you said? It could be ballot drift? It could be any of  
17 those things, correct?

18 A. It's -- it can be a host of factors. All you  
19 can say is that whatever those factors are they're more  
20 influential, substantially more influential than is the  
21 question of what's the racial composition of the  
22 precinct.

23 Q. And to be the clear, if he did an EI analysis  
24 election by election that solves his problem for you,  
25 correct?

1           A. It doesn't -- it solves part of the problem.  
2       Again, it unbundles the characteristics of the election,  
3       so you don't -- in trying to analyze what happened in  
4       2020 you're not stuck with the variance that came from,  
5       you know, 2015 when somebody ran unopposed and somebody  
6       was an incumbent, whatever. You still have the issues  
7       that are germane to that election. But in exactly the  
8       form you're suggesting you can look at those and say,  
9       you know, it's more predictive in this election than  
10      this election, why might that be, and you can talk about  
11      the characteristics of that election. It's really hard  
12      to do that when the election itself is -- it's almost  
13      hard to find where the particular elections are in here  
14      because they're kind of all over the place.

15           **Q. I understand. That's reasonable. So how about**  
16      **this? Is having a high R-square always good?**

17           A. I don't know. I guess I'm tempted to think  
18      that in social sciences you -- it's like a higher --  
19      it's like you can't be too rich or too thin. Right?  
20      Can you have -- can you have too high in R-squared? I  
21      don't think it's -- certainly there are equations with  
22      high R-squareds that are less useful than ones with low  
23      R-squareds because it depends on what it is you're  
24      measuring. Right? There's an old joke about if you  
25      measure the same thing twice, right, you'll get a high

1 R-squared, except in the social sciences where even if  
2 you measure the same thing twice you don't get a high  
3 R-squared because measure and error, et cetera, et  
4 cetera, et cetera. So it's a -- it's an indicator of  
5 the completeness of the model. Among other things  
6 it's -- it's cautionary I think. A low R-squared is  
7 cautionary in the sense that, you know, you need to --  
8 you need to pay some attention. It can be humbling in  
9 the sense of what you're explaining. It can be  
10 challenging in the sense that you know that there's  
11 other things to take into account.

12           It can also reveal that your model is  
13 underspecified, so it -- and specification is not just  
14 an issue of -- one of the things you can't do is just  
15 ignore the fact that the model has a low R-squared, in  
16 the sense that your certainty about what's in -- about  
17 the parameters in the model is partly a function of what  
18 you left out of the model. And if the model is  
19 improperly specified, which is often the case with low  
20 R-squared models, then a properly specified model may  
21 produce a different result. So you point out  
22 incumbency. It's possible that if you bring incumbency  
23 in as a variable that this correlation will diminish.  
24 It's control variables because of specification error.  
25 Bringing in the right specification can diminish,

1 sometimes can reverse correlation. So it's -- it is --  
2 it's not always better to have a higher R-squared. But  
3 certainly a low R-squared signals -- should make you  
4 cautious about overinterpreting the one parameter you've  
5 estimated because you really -- you don't have a full  
6 model that let's you estimate that parameter.

7 **Q. Is R-squared a biased estimator in the term,**  
8 **whatever that means, the -- the statistics?**

9 A. Well, it's -- to the extent that you have met  
10 the basic requirements for OLS then the R-squared, like  
11 the estimates of the parameters, are linear, unbiased  
12 estimators. They're -- and to the extent you violate  
13 assumptions the -- the nice thing about OLS, one of the  
14 many, many nice things about OLS, is that even when you  
15 violate assumptions it tends to have more impact on  
16 efficiency than it does on bias. So the estimator is  
17 often linear -- OLS estimates, even when you violate a  
18 condition that causes them not to be the most efficient  
19 estimator, they're often surprisingly robust with regard  
20 to bias. So, you know, in the -- in the context of  
21 social science estimation the -- you know, R-squared  
22 is -- is a relatively reliable indication of how good a  
23 job you're doing of accounting for variation.

24 **Q. Could a high R-Square score be a symptom of**  
25 **overfitting your best fit line?**

1           A. Absolutely.

2           **Q. Yeah.**

3           A. It's -- you know, as the number of independent  
4 variables approaches the number of data points you will,  
5 you know, by definition have one less parameter than you  
6 have data points. You will perfectly fit your -- fit  
7 your line. So in and of itself it's not -- you can --  
8 you can produce the high R-squared trivially. On the  
9 other hand, I'm not sure that you can produce a low  
10 R-squared trivially. I think that really does tell  
11 you that -- again, it's not -- in and of itself it  
12 doesn't -- it doesn't say you haven't learned anything.  
13 It is a -- it is an appropriate caution I think in this  
14 kind of modeling, and I think a -- and I think a very  
15 valid one because I think one of the things it tells you  
16 is this is not the right way to do this analysis. Or I  
17 wouldn't say "not the right." Not the best -- not the  
18 best way, not the most informative way to do this  
19 analysis.

20           **Q. I understand. When you analyzed Professor**  
21 **Stein's report, I just want to be clear for the record,**  
22 **you used normal R-squared, not R-squared adjusted,**  
23 **correct?**

24           A. Correct.

25           **Q. Okay.**

1           A. There's -- I mean, there is only one  
2 independent variable so --

3           **Q. Right.**

4           A. But the adjusted R-squared just accounts for  
5 the fact that you've got, you know, multiple independent  
6 variables. And it produces a result as you get close to  
7 reaching a level where your number of variables is close  
8 to the number of cases. But the R-squared, adjusted  
9 R-squared are not going to be very different here.

10          **Q. On page 5 of your report, sir, you say -- if**  
11 **you want to turn to that page, I just want to make sure**  
12 **I'm quoting you correctly -- "Taken together, the issues**  
13 **identified above suggest that the evidence relating to**  
14 **Gingles 2 and Gingles 3 provided in Dr. Stein's report**  
15 **are not sufficient to meet the plaintiff's burden of**  
16 **proof on these two threshold conditions, or the broader**  
17 **totality of the circumstances." Is that what you wrote,**  
18 **sir?**

19          A. Yes.

20          **Q. Okay. And I'm not trying to get horsey with**  
21 **you. I think I -- you know I have enormous respect for**  
22 **you, but I want to be clear about a couple of things.**  
23 **You're not an attorney, correct?**

24          A. Correct.

25          **Q. And you've never done a survey of burdens of**



1 proof or sufficiency of evidence, correct?

2 A. Correct.

3 Q. And while you have extensive background in  
4 testifying you have no background in what sufficient  
5 evidence is for a judge, correct?

6 A. Correct.

7 Q. Okay. In the final part of your report you  
8 cite I think this -- this report from Abott and  
9 Magazinnik; is that correct?

10 A. Yes.

11 Q. Okay. I'm going to hand it to you. I've  
12 labeled this Exhibit 5. We're out of order. I  
13 apologize. But I just did it incorrectly.

14 Could you review this and make sure this is  
15 the right article?

16 A. I think this is right.

17 Q. And so in the final part of your report you  
18 caution us based on this article that the use of  
19 single-member districts may actually be worse for  
20 Latinos in some communities, correct?

21 A. Correct.

22 Q. And that's based largely on the data for these  
23 California elections that are analyzed by Abott and  
24 Magazinnik, correct?

25 A. It's -- as they cite, they're unlike the

1 literature on single-member districts and black  
2 representation. There's long been controversy about  
3 whether that same relationship was present for Latino  
4 voters sometimes in earlier studies, sometimes in  
5 different locals. So they're really addressing what's  
6 kind of been a mixed set of findings in the past, I  
7 guess a much more -- a much less certain area of the  
8 literature than would be the case for the value of  
9 single-member districts in providing for increased black  
10 representation.

11 Q. Okay. That's in relation to the Latinos you  
12 mean, correct?

13 A. Correct.

14 Q. All right. And I think in your report you  
15 posit that in highly segregated areas with low vote  
16 participation by Latinos single-member districts may not  
17 lead to more representation. That's what you posit,  
18 correct?

19 A. I'm not -- I'm not positing that.

20 Q. Okay. You're just recording that?

21 A. So -- yeah. And particularly -- so this is --  
22 I don't cite these -- I've never cited this paper in a  
23 report before. I'm citing it only because when  
24 Dr. Stein laid out kind of his three areas of evidence  
25 he suggested that this was part of what he was advancing

1 in the report, and it's his citation to their work that  
2 I'm referencing. So what I'm just providing is sort of  
3 some context for his discussion of their -- of their  
4 report. I think it -- their -- what their conclusion  
5 that I quote indicates is that they see there's reason  
6 in some areas to be cautious because the effect is not  
7 going to be -- in their view is not going to be  
8 uniformly positive. It may just be -- it may be  
9 neutral. It may be negative. And, again, I think that  
10 just provides some context for what Dr. Stein is saying  
11 here. It's not something I'm saying. It's just, I  
12 think, is a little bit of a corrective to what he's  
13 saying they're saying.

14 **Q. Okay. So you're not going to testify about it?**  
15 **This is not something you're saying you will testify**  
16 **about?**

17 A. I mean, if I'm asked about it, I would testify  
18 about it.

19 **Q. All right.**

20 A. I don't get to control that.

21 **Q. I'm going to need to delve into it just a**  
22 **little bit, then, if you don't mind.**

23 A. Yeah. Absolutely.

24 **Q. In this -- on the report on page 7, you say the**  
25 **following: "Spanish Surname Registered" -- I guess turn**

1 to it. It's on the -- it looks like the second full  
2 paragraph. It's the second sentence. It starts with --

3 A. Yes.

4 Q. -- "Spanish Surname Registered Voters (SSRV)  
5 make up less than 20 percent of the registered voters in  
6 Spring Branch ISD, and in the most recent school board  
7 elections that included the Position 4 Elizondo -  
8 Earnest contest, Spanish Surname Registered Voters made  
9 up less than six percent of the actual election day  
10 Spring Branch voters." Correct?

11 A. Correct.

12 Q. And then you draw similarity, is it fair to  
13 say, between the article's use of voter eligible  
14 population and SSR -- SSVR, correct?

15 A. Correct.

16 Q. But isn't it true that -- how about this? How  
17 does Abott and Magazinnik define voter eligible  
18 population in their article?

19 A. I believe they're using -- I don't know if  
20 they're using VAP or CVAP. I don't recall.

21 Q. All right. Let's take a look at the article so  
22 we're not -- I think it's on -- it's on Figure 4. I  
23 think this is page -- let's see. Here's the exhibit.  
24 One second. Let me find it for you. I apologize. I  
25 should have put the page number here, and I thought that

1 I had.

2 MR. ABRAMS: Figure 4 is on page 22.

3 MR. GOLANDO: Twenty-two. Okay.

4 Q. (BY MR. GOLANDO) On page 22, sir, here, I  
5 believe the discussion -- so I think it's on page 21.

6 MR. ABRAMS: The text begins on page 21 at  
7 the bottom.

8 MR. GOLANDO: Yeah.

9 Q. (BY MR. GOLANDO) So here it is. How are they  
10 defining -- what is your understanding of how they are  
11 defining voter eligible population?

12 A. So they -- it looks like they're defining it as  
13 CVAP or H -- I guess Latino CVAP or Hispanic CVAP.

14 Q. So HCVAP and VEP are the same thing here,  
15 correct?

16 A. Yes.

17 Q. And would you agree with me that SSVR and HCVAP  
18 are different measures?

19 A. Yes.

20 Q. And SSVR is a lower measure often done, or has  
21 to be --

22 A. Well, one hopes.

23 Q. One would hope so.

24 A. Not always in Texas or Louisiana. But, yes, it  
25 should be a subset of CVAP.

1 Q. And in SBISD it is absolutely a subset of  
2 HCVAP, correct?

3 A. It is lower than CVAP, yes.

4 Q. And so HCVAP is likely to be far higher in  
5 SBISD than SSVR, correct?

6 A. It is higher.

7 Q. I think I got the adjective. It's higher?

8 A. Yeah, it's higher. It's -- it's significantly  
9 higher. So it's not just marginally higher. It's  
10 significantly higher.

11 Q. Okay.

12 A. Yes.

13 Q. And so in the article itself on page 22 --  
14 let's pull it up for you again -- there are a couple of  
15 different graphs. If you'll look at Figure 5, I  
16 believe, it says -- in the article it says "there is a  
17 dramatically" -- "dramatic and precisely estimated  
18 positive effect in large districts that are composed of  
19 at least 30 percent Latinos." That's Figure 5. What  
20 does that mean exactly?

21 A. That means that there's -- there's an upward  
22 slope when they constrain or confine the population for  
23 the figure to that set of districts.

24 Q. How does the -- what is the definition of a  
25 large district in this article?

1           A. You mean a district with a large Latino  
2 population?

3           Q. I think they actually do it by enrollment, if  
4 I'm not mistaken. Maybe here is the -- so small  
5 districts -- so how does the article define a small  
6 district?

7           A. Enrollment of less than 13,700.

8           Q. And how does it define a large district?

9           A. Larger than 13,700.

10          Q. And how many students does SBISD enroll?

11          A. I have no clue.

12          Q. Is it higher than 13,000?

13          A. I would think so.

14          Q. It's probably a large --

15          A. It's a big district. Yeah.

16          Q. Fair enough. How many Latinos have been  
17 elected to the school board in SBISD's history?

18          A. I don't know.

19          Q. Would you be surprised to hear there was zero?

20          A. I wouldn't be surprised, no.

21          Q. And how many African Americans have been  
22 elected in SBISD's history?

23          A. I don't know.

24          Q. Would you be surprised if it was zero?

25          A. No.

1 Q. How many have been appointed?

2 A. I don't know.

3 Q. And would you be surprised it was zero?

4 A. No.

5 Q. Okay. The fact that the voter eligible  
6 population is north of 20 percent and that SBISD is a  
7 large school district, does that change your opinion of  
8 whether or not single-member districts might be a better  
9 fit given this article?

10 A. I guess I'm -- I'm going on what they say,  
11 which is "increasingly racially polarized voting coupled  
12 with small numbers of Latino voters relative to other  
13 groups-may create new barriers." And so they're  
14 actually talking about the small number of voters, so I  
15 guess -- I don't know how eligible is translating into  
16 voters in California, but eligible is not translating  
17 into voters here. And so in the sense that their  
18 concern is about what happens when you have a small  
19 number of Hispanic voters in an increasingly polarized,  
20 politicized environment as a result of issues related to  
21 change in the nature of elections, they offer a caution  
22 about that that I think is -- continue to believe is  
23 precisely correct for SBISD.

24 Q. But right now you would agree with me that  
25 there's zero chance that a Latino preferred candidate



1 can be elected today, correct?

2 A. I didn't know you thought that, and I don't  
3 agree with it.

4 Q. Okay. Let's just go historically.

5 Historically the minority preferred candidate has not  
6 been elected, correct?

7 A. I don't know that that's correct. I don't  
8 believe it's correct.

9 Q. Fair enough. You said before that you believe  
10 that the Latino candidate is usually the Latino surname  
11 candidate, correct?

12 A. I said I thought it's probably the case that  
13 when -- yes. So if there's a Latino -- a candidate that  
14 is Latino I think they probably would usually be the  
15 preferred candidate of Latinos, yes.

16 Q. And it's -- you were not surprised to learn  
17 that no Latino has ever been elected to the school  
18 board --

19 A. Yes.

20 Q. -- in SBISD, correct?

21 A. (Moving head up and down.)

22 Q. So the Latino preferred candidate in SBISD  
23 elections has never been elected in SBISD, correct?

24 MR. CRAWFORD: Objection, form.

25 A. No. That's -- most of the elections to SBISD

1 board have not included Latino candidates, and so in --  
2 I assume in many of those elections the --

3 **Q. (BY MR. GOLANDO) Fair enough.**

4 A. -- Latino preferred candidate was elected. So  
5 a Latino that was the preferred Latino candidate, if --  
6 and I'm just accepting your assertion that no Latino has  
7 ever been elected. If it's true that no Latino has ever  
8 been elected, then the Latino candidates that were also  
9 the preferred candidate of Latino voters, which is a  
10 subset, has not been elected.

11 **Q. And that's -- that's a much better way to say**  
12 **that.**

13 A. Okay.

14 **Q. And you agree with that, correct?**

15 A. I agree with that.

16 **Q. All right. So the chance -- okay. Fair**  
17 **enough. I think I understand.**

18 **Did you review Professor Stein's proposed**  
19 **single-member district plan in his report?**

20 A. I looked at it. One of the things that I was  
21 clear about in the sort of scope of what I was going to  
22 do and the amount of time I had to do it was that I was  
23 going to stay out of being a demographer.

24 **Q. I understand.**

25 A. So I did not do any -- I looked at it. I

1 recognized what it was. It's a -- a modified version of  
2 the -- he says basically the polling places. It isn't.

3 **Q. No.**

4 A. It's a -- I mean, that obviously -- you know, a  
5 quick look at the population deviation will tell you  
6 that -- you know, nobody gets the population perfect in  
7 an attendance district because there it's about  
8 students, not about people. So -- but it obviously is  
9 based on -- the cores of the districts are the  
10 recognizable cores of the -- of the current polling  
11 places are, which would be the attendance districts,  
12 with some modifications to -- you know, to get the  
13 population equal. So that's what I saw there. It looks  
14 like the area that he says is the district that's CVAP  
15 majority is an area where I would suspect there's a --  
16 it could be you could draw a CVAP majority district  
17 so --

18 **Q. Does anything about that district give you**  
19 **pause as a map drawer? Because you've done that in the**  
20 **past, correct?**

21 **MR. GOLANDO:** Actually, strike that. Let  
22 me just do it correctly.

23 **Q. (BY MR. GOLANDO) Historically you've drawn**  
24 **maps for jurisdictions, right?**

25 A. Yes.

1 Q. All right. So you have a vast history of  
2 drawing maps, correct?

3 A. I've drawn a lot. I wouldn't say vast.

4 Q. Okay.

5 A. But I've drawn a lot of school district maps,  
6 yes.

7 Q. Fair enough. Does anything about that, the way  
8 it's shaped geometrically, give you pause?

9 A. No.

10 Q. Would you agree that it's a compact district?

11 A. Yes.

12 Q. Okay. Would you agree that if the numbers are  
13 correct that it's CVAP majority?

14 A. Yes.

15 Q. Would you agree that that map meets Gingles 1?

16 MR. CRAWFORD: Objection, exceeds the scope  
17 of his engagement and his opinion.

18 Q. (BY MR. GOLANDO) But as an expert in map  
19 drawing I'm asking and as -- and one who's drawn several  
20 Gingles 1 maps does it meet the form of Gingles 1?

21 A. Again, I -- so I haven't looked at any of this,  
22 so I'm going entirely on your assertion that the numbers  
23 that were provided match the numbers that -- the  
24 picture. Right? And I have no idea whether that -- you  
25 know, whether that picture actually produces the numbers

1 or not but --

2 Q. Sure.

3 A. -- if that picture produces those numbers, and  
4 that's the most current CVAP estimate, then I'd say  
5 that's what you'd be looking for in a -- you know, in a  
6 district to establish Gingles 1.

7 Q. So yes?

8 MR. CRAWFORD: Same objection.

9 A. Yes.

10 Q. (BY MR. GOLANDO) Thank you, sir. All right.  
11 Only about nine more pages.

12 Is the Latino community in SBISD  
13 sufficiently large and geographically compact to  
14 constitute a majority in a single-member district?

15 A. I don't know.

16 Q. In your experience? You've drawn maps.

17 A. I don't know.

18 Q. And you've reviewed election analyses, and you  
19 know SBISD well. You've worked here for 20 years.

20 In your opinion, given your broad history  
21 of working with SBISD, do you think it's sufficiently  
22 large and geographically compact?

23 MR. CRAWFORD: Object to the extent it --

24 A. I mean, I don't have --

25 MR. CRAWFORD: -- exceeds the scope of his

1 opinion.

2 A. I don't have an expert opinion about that.

3 Q. (BY MR. GOLANDO) How about just a lay opinion,  
4 then?

5 A. A lay opinion? It wouldn't surprise me. I  
6 guess that's one of our -- that's one of our answers. I  
7 wouldn't be surprised if that was true, but I haven't --  
8 I have not at any time trying to draw -- tried to draw a  
9 district. So, you know, I don't have any -- I don't  
10 have any information to add to this beyond what is in  
11 Dr. Stein's report, but it wouldn't surprise me.

12 Q. Based on your years of experience in data  
13 reviewed for SBISD are Latinos generally politically  
14 cohesive in SBISD elections?

15 A. Again, it's -- you know --

16 Q. It's a range?

17 A. It just depends. It's a range. And they're  
18 certainly not in the -- not cohesive at the levels that  
19 we would traditionally see for black voters.

20 Q. And that would be 90 percent and above,  
21 correct?

22 A. Yes.

23 Q. Okay.

24 A. And I'm not sure even -- if it would even be  
25 cohesive at the level you would normally see in a

1 general election. So there's some -- again, there's  
2 modest to moderate cohesion.

3 Q. Based on your years of experience as an  
4 election analyst and demography expert, in the data  
5 reviewed for SBISD historically, not just for this case,  
6 but historically are Anglos politically cohesive in  
7 SBISD elections generally?

8 A. Moderately I'd say. I mean, it's -- it varies  
9 from election to election. But, yeah, it's a --  
10 probably -- probably somewhere in that same range, but  
11 I don't really know.

12 Q. Based on your years of experience and the data  
13 reviewed for SBISD do Latino voters in SBISD elections  
14 support different candidates than Anglo voters in SBISD?

15 A. I have not -- I don't know. Comprehensively I  
16 don't know.

17 Q. You did an EI report, correct?

18 A. The what?

19 Q. You did an EI before the litigation began?

20 A. Yes.

21 Q. Okay. And you recall the contents of that EI  
22 report, correct?

23 A. I do.

24 Q. And I'm asking you to call into that based --  
25 based on your expertise and your -- the data you've

1 collected and your experience in SBISD. Do you recall  
2 whether or not Latino voters in SBISD elections support  
3 different candidates than Anglo voters generally?

4 A. I guess I'm not clear on -- I mean, you're  
5 asking me about the results of the analysis that I  
6 provided the attorneys, so I'm not sure -- is this  
7 like -- are we back in the realm of what's acceptable  
8 here or --

9 Q. I'm asking you just based on your experience.  
10 It's a question about do you believe them to be so based  
11 on the entirety of your experience here?

12 MR. CRAWFORD: And based on Dr. Alford's  
13 interpretation of the question I think it would call for  
14 protected communications, and so I'll instruct you not  
15 to answer.

16 Q. (BY MR. GOLANDO) You can answer if you want.

17 A. I've been instructed not to answer --

18 Q. Fair enough.

19 A. -- by my employer.

20 Q. I think we've asked that question before.

21 In your opinion based on your years of  
22 experience at SBISD, does the Anglo majority vote  
23 sufficiently as a bloc to enable it to defeat the  
24 minority preferred candidate?

25 A. I would say sometimes.



1 Q. How often?

2 A. I don't know.

3 Q. More often than not?

4 A. I don't know.

5 Q. Does Texas have a history of official  
6 discrimination in the jurisdiction in SBISD that  
7 affected the right to vote? Does Texas have it?

8 A. Now we're -- we're not just outside of my  
9 expertise on this case. We're just --

10 Q. Yeah. I'm just trying to limit your testimony.  
11 I just want to make sure you're not going to testifying  
12 in totality. So if you don't have an opinion that's  
13 great. You can just say "no."

14 A. Yeah, I don't have an opinion.

15 Q. Okay. Does Harris County?

16 A. I don't have an opinion. I don't have an  
17 expert opinion.

18 Q. Does SBISD?

19 A. I have no idea.

20 Q. Does SBISD use the place system for voting?

21 A. It's my understanding they do.

22 Q. Okay. Have minority candidates been denied  
23 access to the jurisdiction's candidate slating process  
24 formally or informally to your knowledge?

25 A. I don't know anything about the slating

1 process, if there is one.

2 Q. Are SBISD minorities discriminated against in  
3 socioeconomic areas such as education, employment, or  
4 health?

5 A. I don't know.

6 Q. Have there been overt or subtle racial appeals  
7 in campaigns in SBISD elections?

8 A. I don't know.

9 Q. Okay. Has a minority ever won an election in  
10 SBISD to your knowledge?

11 A. I don't know.

12 Q. Okay. Are elected officials -- are the SBISD  
13 trustees responsive to the concerns of minority voters  
14 in SBISD? Do you have an opinion?

15 A. My opinion, yes, I think they are.

16 Q. What is that based on?

17 A. Just on -- you know, the degree -- sort of my  
18 sort of nonexpert kind of information you get from  
19 reading the paper sort of thing, that certainly  
20 there's -- you know, the district floats bonds and  
21 builds facilities in a variety of areas. Like most  
22 districts they run a -- you know, the bilingual  
23 education program. They have programs that are designed  
24 to, you know, help students, early start kinds of  
25 things, whatever. So that's just -- my sense is the

1 district has a reputation as a district that has, you  
2 know, made a variety of efforts, provided resources and  
3 expertise directed toward -- toward minority students.

4 **Q. Will you be testifying about that?**

5 A. I don't think so. It's not an area in my  
6 report. It's not my area -- I mean, that's -- again,  
7 that's a -- you can have a sense about that, and then  
8 there's empirical information about it. I don't have  
9 the empirical information and it's not an area that I do  
10 work in so I don't testify about it.

11 **Q. Fair enough. We're entering the last stages,**  
12 **the -- my category of this is fun stuff, so I hope this**  
13 **is enjoyable for you. It will be for me.**

14 **My first question to you actually is what**  
15 **is the ecological fallacy?**

16 A. So the ecological -- normally you gather data  
17 at the level that you want to ask or answer a question.  
18 So if I want to know what effect people's gender has on  
19 how they vote I would -- because that's a question in  
20 which the unit of analysis of the question is an  
21 individual person then the unit of analysis for my study  
22 should be people. So I would ask people about their  
23 gender, and I would ask them about how they vote. And  
24 that would be a normal analysis. An ecological analysis  
25 is one where your -- your question -- you want an answer

1 at the individual level, but you're not getting the data  
2 at the individual level. You're getting it at some  
3 level of aggregation. So, for example, I could do a  
4 study of counties in the United States based on the --  
5 what proportion of the county is male and female, and  
6 then look at Republican, Democratic voting, and try to  
7 draw a conclusion about the effect of gender on  
8 Republican or Democratic voting. And that's the  
9 ecological fallacy, right, that -- that once aggregated  
10 that the variation across those aggregations is  
11 disclosing simply the same variation that's taking place  
12 across individuals. It's not necessarily the case that  
13 that's happening.

14 Q. Okay. So as I learned it -- this is very --  
15 this is like Science 101, right -- it's when you infer  
16 individual behavior from aggregated measurements. Is  
17 that fair?

18 A. Yes.

19 Q. Okay. So ecological regression describes a  
20 voting behavior between certain relationships, right?

21 A. Correct.

22 Q. Okay. But you can't infer the intent of the  
23 voter, correct?

24 A. It doesn't measure the intent of the voter.  
25 People infer the intent all the time.

1           **Q. For sure. Right.**

2           A. But, no, you don't have -- you're not measuring  
3 the voter's intent, although it's true in any research  
4 scheme you have a variety of tools that help -- can help  
5 you to eliminate certain possibilities or to make  
6 certain things more likely than not. So I'm going to  
7 give you an example in a partisan general election. If  
8 you find that -- as I talked about earlier, if you find  
9 that when the Republican candidate is a Hispanic,  
10 Hispanics vote against that candidate when -- when the  
11 candidate is Anglo. So what you see there then is a  
12 pattern, that the changes in the partisanship of the  
13 candidate drives voting, but the changes in the  
14 ethnicity candidate doesn't drive the voting. That's  
15 sufficient -- not that you would know that from any one  
16 analysis, but that's sufficient to suggest that given  
17 that you've added this other condition that the behavior  
18 of the voters, whatever their intention, their behavior  
19 is not being driven by the signal that they're getting,  
20 right, because you've separated two signals, signal  
21 about the candidate and party, and signal about the  
22 candidate and ethnicity. And where you can separate  
23 those you can see whether it's a mix of those or whether  
24 it's mostly one or mostly the other or neither.

25           **Q. So you infer the intent of the voter by**

1       **subtraction almost, correct?**

2           A. You still don't infer the intent. I'm very  
3 uncomfortable with intent analysis in all of its forms.  
4 I don't believe people have intent quite frankly. It  
5 requires that people have a unified personality, that  
6 people have -- that people's brain is -- that part of  
7 the brain that actually makes decisions is entirely in  
8 control, and therefore the -- I mean, I think just the  
9 idea that -- I mean, there's a lot more than just  
10 unintended consequences. There are just completely  
11 unintended actions as well. So even talking about  
12 intent at the individual level where you have the most  
13 chance of it making sense I'm not comfortable with it.  
14 We certainly don't have tools for teasing that out. And  
15 then, of course, when you get to collective bodies my  
16 favorite is the intent of the legislature. Anybody who  
17 has ever been near a legislature knows the idea, as you  
18 well know, that the legislature itself generates an  
19 intent, it's like forget about the -- I mean, the  
20 individual legislators could barely figure out what  
21 their intent is on a good day. Collectively Lord only  
22 knows what's going on but --

23           Q. Yeah. I think voters are pretty irrational, I  
24 think legislators are definitely irrational, in policy  
25 meetings pretty irrational, right? I understand.

1           A. And collectively whatever we're guilty of as  
2 individuals put -- put us in groups of two, in groups of  
3 four, in groups of eight, in groups of twelve, and then  
4 talk about the outcome of that irrationality when it  
5 gets aggregated. And I think it's really -- it's not  
6 just difficult. I just don't think it's -- that there's  
7 a value to it. So I don't think it's valuable to talk  
8 about the intent of the -- to the intent of the voters.  
9 I think it's valuable to talk about -- certainly it's  
10 valuable to talk about what the cue is the voters are  
11 responding to. And this is a context where that's  
12 really important. If the -- if voters are responding to  
13 a cue of ethnicity, then that tells you something about  
14 the behavior. And if they're not, it tells you  
15 something about their behavior and --

16           **Q. And we would know that they were responding to**  
17 **a cue about their ethnicity in this case if we ran an EI**  
18 **and there was cohesion for Latino voters and cohesion**  
19 **for Anglo voter candidates, correct?**

20           A. No.

21           **Q. How would we know, I guess is more or less --**

22           A. Okay. So that -- we can certainly  
23 distinguish -- again, you need an analysis that brings  
24 in some other factors so that you can tell whether  
25 that's the factor that's explaining it or the cue. Just

1 as if you don't bring in partisanship you can't tell the  
2 difference in the -- you know, in a general analysis.  
3 So if you -- I mean, you can look at -- you can vary  
4 things like, you know, the location of voters within the  
5 district. You can vary things about, you know, the  
6 voters' opinions and so forth. So there are a lot of  
7 other things you can look at that -- you know, that  
8 would allow you to at least get some sense of how  
9 powerful or durable or influential any particular  
10 characteristic is.

11 **Q. Okay.**

12 A. But I still think it's -- it's not really --  
13 it's not really about intent. It's about -- it's about  
14 the behavior rather than the internal process.

15 **Q. Do you believe that there is a link between**  
16 **biology and political ideology?**

17 A. Yes.

18 **Q. Could you tell me what that -- what you believe**  
19 **that is?**

20 A. So for many aspects -- so I -- first of all,  
21 ideology is not an abstract way of organizing your  
22 thinking about the world. This is some of the oldest  
23 work in American politics. You ask people ideology in  
24 the "ism" sense, liberalism, conservatism, communism,  
25 you know, libertarianism, whatever, they don't have a



1 clue. They don't know what the basic principles are.  
2 They never apply them. They have no clue. So at the  
3 same time, as John Jost has pointed out, the behavior of  
4 voters is remarkably -- if you know, you know, as he  
5 says in "The End of Ideology," if you think ideology  
6 disappeared from American political life you must not be  
7 seeing the same American political like I'm seeing  
8 because this ideology runs rampant. So what is it? And  
9 clearly it's -- you know, we don't have to scratch the  
10 surface to know it's not principle. Right?

11 So if it was principle conservatism then --  
12 like Greg Abbott believes local governments should make  
13 their own decisions, not central governments. Right?  
14 Well, yeah, that's true. Just tell me what the subject  
15 matter is of the local government, and I'll tell you  
16 whether he favors it or not. So that's not the same  
17 thing as saying that he's not ideological. Right? He's  
18 very ideological because the kind of things he wants to  
19 stop Harris County from doing are a very specific kind  
20 of thing. Right? It's not hard to predict what  
21 Governor Abbott is going to get on about these days.  
22 It's going to be a series of things that are very  
23 closely related. And as it happens those things are  
24 closely related to things that vary in the way human  
25 brains are built. So --

1           **Q. How do you --**

2           A. -- the more --

3           **Q. I'm sorry. I didn't mean to cut you off.**

4           **Please go ahead.**

5           A. So, I mean, the more easily disgusted someone  
6 is in general the more conservative they'll be in  
7 general on a very specific set of conservative issues,  
8 those issues related basically to sexual behavior. So I  
9 can do a really good job if I just know how easily  
10 you're disgusted. And I can measure that by skin  
11 conductance, by -- just by showing you a picture of  
12 somebody eating worms. I can measure your skin  
13 conductance, and I can do a good job of predicting your  
14 opinion on gay marriage or abortion or premarital sex,  
15 things that are related to basically just sexual purity  
16 or sanctity. I can't do a very good job of saying  
17 whether you're a fiscal conservative or whether you're a  
18 hawk, but I can for that particular area.

19           **Q. Are there any other areas that are close to**  
20 **sexual areas?**

21           A. Well, I mean, if I'm -- if instead of giving  
22 you a disgusting image I give you a threatening image,  
23 or I unexpectedly play a loud burst of white noise in  
24 your earphones, I can do a very good job of predicting  
25 your position on securing the border, gun control, more

1 funding for the military, whether you would like to have  
2 a bomb shelter in your backyard in the '60s. So we have  
3 a mechanism in our brain that responds to threat.

4 It's -- among other things it's a -- part of that is a  
5 startle mechanism. So we startle when we hear loud  
6 noises. People who are conservative on national defense  
7 startle significantly more easily than do liberals on  
8 national defense, even if the -- what they're startling  
9 to is just a burst of white noise, absolutely content  
10 free. That startled reaction varies across individuals.  
11 And there's a really nice study that looked at startle  
12 reflex in infants, so how easily startled is an infant  
13 because that gets recorded as part of Apgar. Like,  
14 you're supposed to startle.

15 **Q. Sure.**

16 A. So they recorded that, and then followed that  
17 up like 40 years later with how easily startled they  
18 were as adults. And it's a -- there's about a 90  
19 percent predictive relationship. So our startle  
20 ability, the degree to which our amygdala and the  
21 networks that serve the amygdala moving both to  
22 impulsive reactions, like a jerking motion, and to  
23 things like sensing, feeling, experience, and fear,  
24 those things are -- those differences are differences  
25 we're born with. And so being born into -- being born a

1 person who is more easily startled or has a more active  
2 threat system or threat recognition system places you in  
3 a more threatening world. And someone who has, you  
4 know, very little of that kind of -- and I think both  
5 liberals and conservatives recognize this. Right?

6 Liberals recognize that conservatives see a  
7 more dangerous world. And, of course, because different  
8 ideologies like to be pejorative with each other  
9 liberals say conservatives are just paranoid, and  
10 everywhere they look they see a threat. Right? And  
11 then you ask conservatives like, "Well, what about  
12 liberals?" And they say, "Oh, yeah, that's great. Put  
13 liberals in charge of the Defense Department. They  
14 don't see threats anywhere." Right? "Liberals wear  
15 rose-colored glasses. They look out in the world and  
16 say, 'Maybe if we were just nice to them they'd be nice  
17 to us.'" And conservatives say, "No. You could be nice  
18 to them, and they'll kill you." Right? So one side is  
19 seeing a scarier world than the other side. We know  
20 that if we manipulate how scary the world is, like if  
21 you make conservatives feel safer, you put them in a  
22 safer environment, you create a safer system, they  
23 become more liberal in their views. They actually  
24 become more liberal across a fairly wide range of views.

25 If you threaten liberals, they become more

1 conservative. So you have both a resting state  
2 difference, and then you have this reaction difference.  
3 Right? If I ask you whether homosexual relations are  
4 inappropriate or immoral or -- well, that would work 20  
5 years ago. It doesn't really work anymore except with  
6 people over the age of 70. It won't work with students  
7 anymore. There's no variation in that at all. But if I  
8 ask you whether incest was appropriate on a scale of one  
9 to five, from one being absolutely never, you know, to  
10 five being sure, what the heck, if I ask you that in a  
11 nice, clean setting you'll answer that measurably  
12 differently than if you do that in a setting where  
13 there's something that might prompt disgust, a presence  
14 of rotting food or -- one study that's a remarkable  
15 study, they -- the only thing they varied in the entire  
16 study was when they would direct the students who came  
17 in in the central entryway, and then the hallway split.  
18 And one side of the hallway was a hand sanitizer  
19 dispenser. On the other side there wasn't. So the  
20 experiment is just to flip which light of the hall the  
21 table is on when they fill out the survey. So they  
22 either told the students to go to the right, or they  
23 told the students to go over to the table by the hand  
24 sanitizer. That changes people's opinion. It  
25 measurably changes their opinion on gay marriage, on

1 homosexuality in general, on abortion, on a whole series  
2 of things related to sexual purity.

3 **Q. That is fascinating.**

4 A. Just a prompt of purity. It's something as  
5 simple as that that prompts purity. And if you think  
6 about traditional notions of ideology it's very hard to  
7 understand why purity is a part of that at all.  
8 Honestly, what in the -- in the thoughtful scheme,  
9 Marxism or John Locke or whoever, what does sexual  
10 behavior got to do with it? How did it get to be so  
11 central to the political debate between liberals and  
12 conservatives not just here but in every country in the  
13 world and every period of history? Why is it so  
14 central? Why is it so central to religion, between  
15 liberal and conservative religions? Why is it important  
16 to the orthodoxy and not important to the reformed?

17 So my answer to that is the reason that  
18 it's central and the reason it's ever present is that  
19 human beings differ from each other. And they differ in  
20 two ways. They differ in the sense that their life  
21 experience is completely unique. And so you are who you  
22 are because of what you lived. But you also were  
23 completely unique the day you were born. And that  
24 uniqueness the day you were born is not just your genes.  
25 It's a whole set of structures inside your brain that

1 are going to make you a different person than, for  
2 example, your twin. I have twins, and they are as  
3 different as night and day. And the same is not true  
4 for identical twins.

5 **Q. That's true.**

6 A. Identicals are not different as night and day.  
7 The likelihood that they'll share the same adult  
8 ideology is twice as high if they're identical twins as  
9 if they're not identical twins. And parents don't  
10 raise -- parents don't tell -- when they have identical  
11 twins, they don't say, you know, "Republicans are great,  
12 and let's support Donald Trump." But if they're  
13 nonidentical twins they take one of them aside and say,  
14 "Trump is a great guy." They take the other one aside  
15 and say, "Joe Biden is a terrific guy." Right? They  
16 lived in the same environment, they were born at the  
17 same time, and yet they are markedly different on  
18 fundamental issues like political ideology. And that to  
19 me tells me there's a biological basis to it.

20 And that biological basis, like all the  
21 rest of our biology, is just distributed randomly as a  
22 result of sexual reproduction. Right? I'm more likely  
23 to have the same -- politics runs in families because,  
24 after all, George W. Bush has 50 percent of George H.W.  
25 Bush's genetic material. Preston, on the other hand, is

1 out there like 1.12 percent, so you're going to -- as  
2 the family spreads out, you see -- you see more  
3 difference. And then more broadly across the population  
4 we're for the most part unrelated. We share  
5 approximately zero segregating genes within the average  
6 person in the population so --

7 Q. That's interesting. And the course of that  
8 study -- I think that you cited this study -- it's  
9 called "Political Attitudes Vary with Detection of  
10 Androstenone"?

11 A. Androstenone. Yeah.

12 Q. Am I saying that correctly? This is your work,  
13 correct?

14 A. It's a team.

15 Q. Yeah, of course. I've labeled this Expert --  
16 Expert Exhibit No. 4. Could you review it and  
17 authenticate it for me, please?

18 A. It looks like the study.

19 Q. So this is a report you published with three  
20 other folks it looks like; is that correct?

21 A. Yes.

22 Q. And could you describe what this report is to  
23 the court, please?

24 A. So this is a study that -- there's a -- people  
25 have a biological difference in their ability to detect



1 and in their classification of the pleasantness or  
2 unpleasantness of androstenone. And this is a study  
3 that looks at whether that difference is related to  
4 anything that might be related to politics, in  
5 particular to sort of what broadly might be called a  
6 preference for hierarchy.

7 **Q. And what were the findings? Do you recall?**

8 A. The findings, that there is a modest  
9 relationship between the ability to and the valence on  
10 the detection of androstenone and a preference for  
11 hierarchy.

12 **Q. So what is androstenone? I'm not sure I**  
13 **understand what it is.**

14 A. It's a -- it's a -- it's a chemical that's  
15 present in humans. It's a -- part of a breakdown  
16 product of testosterone. So it's slightly more elevated  
17 in males than females, but it's present in all humans.  
18 It makes its way as a discrete molecule out of the body  
19 through sweat. And when you give people a whiff of it  
20 people either -- a substantial portion of the public  
21 can't smell anything, so they don't detect any odor at  
22 all. And then another set of the public describes the  
23 odor as being similar to vanilla or ginger, something  
24 like that, a kind of a pleasant spicy odor. And then  
25 another portion of the public describes the odor as sort

1 of offensive. Urine is one of the things people often  
2 say it smells like. So for some people it's a very  
3 unpleasant odor, for some people it's a pleasant,  
4 pleasing odor, and then for some people it's no odor at  
5 all.

6 **Q. That's interesting.**

7 A. There are actually -- although we have the  
8 ability to separate about 400,000 chemicals through our  
9 olfactory sense, which is in itself a remarkable -- it's  
10 the only part of our brain that's exposed to air. The  
11 olfactory bulb is literally a part of the physical brain  
12 that protrudes out into the sinuses in order to have the  
13 immediate ability to detect these chemical keys. And  
14 the keys are very specific. There is a -- there is a  
15 receptor for every single chemical that you can detect.  
16 The ones where the receptor is -- where we have  
17 receptors that at one time were active but are no  
18 longer -- because of mutation are no longer functional,  
19 we can't smell, so we actually over time have lost a lot  
20 of active receptor capability. And uniquely among  
21 things related to brain physiology each one of those  
22 receptors has to be built by a separate gene.

23 So as a class we have more genes for  
24 olfaction receptors than we have for any other  
25 physiological character, precisely because it takes a

1 separate gene to build the protein that can detect the  
2 chemical key for each one of them. And what that means  
3 is across that you very often have situations where  
4 people are more or less able to smell certain things.  
5 So some -- for almost everything there's at least some  
6 subset of people who can't detect the odor because of a  
7 mutation in the -- in the genes or an improperly formed  
8 receptor. But it's rare to have -- and often that's  
9 accompanied by people who describe it as intensely  
10 something or not so intensely something. But it's rare  
11 to have a complete valence, for something to be detected  
12 by some people that's very positive and other people  
13 it's very negative.

14 **Q. That's fascinating.**

15 A. Cilantro is the --

16 **Q. Right.**

17 A. -- the only taste equivalent in taste, is that  
18 cilantro either tastes lovely or like soap. And  
19 people -- a lot of people don't like soap in their food.  
20 I don't like soap in my food, so I don't like cilantro.  
21 But other people find it wonderful. So it's in that  
22 same rare category.

23 **Q. Yeah. I love it, so I guess we're just**  
24 **different.**

25 A. There but for the grace of God, go I.

1 Q. So it looks like on page 14 -- if you will turn  
2 to that, please. I want to discuss some of the  
3 findings, if you don't mind. On the bottom part it  
4 discusses the results for the political batteries or  
5 some of the batteries in Table 1; is that correct?

6 A. Yes.

7 Q. And it looks like there was some findings. So  
8 it looks like "Preferences for literalism were  
9 positively correlated with androstenone intensity,  
10 albeit at a relaxed level of significance." Is that  
11 correct?

12 A. Correct.

13 Q. What's the R score for that?

14 A. 0.16.

15 Q. Okay. Now, you stand by that finding, correct?

16 A. Yes.

17 Q. Okay. What is the R-square score for that  
18 finding?

19 A. That would be whatever 0.16 is squared so it --

20 Q. I have that as 0.0256. Correct?

21 A. That would be correct. Yes.

22 Q. Is that lower or higher than Bob Stein's  
23 R-square?

24 A. Lower.

25 Q. Okay. Again on -- you wrote a little bit below

1 that that "disgust sensitivity and androstenone  
2 intensity" -- let's see here -- so there's a -- I'm  
3 going to get you the whole thing. "The same trended for  
4 disgust sensitivity and androstenone intensity." Is  
5 that correct?

6 A. Yes.

7 Q. And you stand by that finding, correct?

8 A. Yes.

9 Q. What is the R score for that finding?

10 A. That one is 0.16.

11 Q. And what is the R-square of that finding?

12 A. I assume it would be pretty similar to the  
13 previous one.

14 Q. Correct. Yes, sir.

15 A. Yes.

16 Q. And I think I have that as 0.0256. Correct?

17 A. Yes.

18 Q. And is that lower or higher than Bob Stein's  
19 R-square?

20 A. Lower.

21 Q. Okay. I think there is another finding here.  
22 "Threat sensitivity." Right below that it says "Threat  
23 sensitivity was also positively correlated with  
24 androstenone intensity." Is that correct?

25 A. Yes.

1 Q. And you stand by that finding, correct?

2 A. Yes.

3 Q. And what is the R score of that finding?

4 A. That is 0.17.

5 Q. And what is the R-square score of that?

6 A. Slightly, however slightly, minisculey higher  
7 than the previous two.

8 Q. I have that as 0.0289. Does that seem correct?

9 A. That seems correct.

10 Q. Is that lower or higher than Bob Stein's  
11 R-square?

12 A. Lower.

13 Q. Okay. Further down you wrote that  
14 "androstenone intensity was positively correlated with  
15 the Preferences for Social Order battery." Is that  
16 correct?

17 A. Correct.

18 Q. And what was the R score for that finding?

19 A. That is 0.19.

20 Q. Pretty good?

21 A. We're starting to get up there now. We're  
22 getting pretty close to -- we're getting to the threes,  
23 aren't we?

24 Q. Yes, sir.

25 A. I'm getting excited.

1 Q. So what is the R-square of that?

2 A. It's something in the -- between three and --  
3 0.03 and 0.04.

4 Q. I have it as 0.0361. Does that sound about  
5 correct?

6 A. It sounds fair.

7 Q. All right. And you stand by that finding,  
8 correct?

9 A. Yes.

10 Q. And is that lower or higher than Bob  
11 Stein's R-square?

12 A. Lower.

13 Q. Further down you say "we do find that  
14 androstenone intensity continues to exhibit a  
15 significant positive relationship with preferences  
16 for social order." Is that correct?

17 A. Correct.

18 Q. And do you stand by that finding, sir?

19 A. Yes.

20 Q. Okay. And what was the R score for that  
21 number? I have it as -- it should be on page 16 in the  
22 full -- first full graph, the last sentence, or the next  
23 to last sentence. "Though we do find that androstenone  
24 intensity continues to exhibit a significant positive  
25 relationship" --

1 A. Yeah. 0.21.

2 Q. Okay. And what is the R-square for that  
3 finding?

4 A. Must have made it to 0.04 by now.

5 Q. Yes, we did. It's 0.0441. Is that correct?  
6 That seem about right to you?

7 A. That seems a little higher than I would think,  
8 but okay. I'll take it.

9 Q. Well, let's just do it real quick. Let me see,  
10 get a calculator. I may have done it incorrectly. I'm  
11 not a social scientist. I just square the number,  
12 correct?

13 A. Yeah, you just square the number.

14 Q. Okay.

15 A. I'm not a calculator, so we're in the same boat  
16 when it comes to this one. This is not really about  
17 being a social scientist. I don't know. It just  
18 seems -- oh, golly. We are getting somewhere. I'm  
19 impressed.

20 Q. Just to be clear with the record, the R-square  
21 for that finding is 0.0441, correct?

22 A. That's correct.

23 Q. And is that lower or higher than Bob Stein's  
24 R-square?

25 A. Lower.



1           Q.   Okay.   That's all I have, I think, on that.

2                        Would you believe that biological  
3 ideological preferences, are they more outcome  
4 determinative in a nonpartisan election I wonder?

5           A.   It's -- I haven't really thought about that  
6 much.   It's -- partisanship itself is -- the direction  
7 of partisanship itself is not very biological.

8           Q.   Okay.

9           A.   So there's very little heritability.   Party ID  
10 comes from exactly where you expect it to come from.   It  
11 comes from your parents.   It comes from your life  
12 experience.   To the extent that it shows heritability  
13 it's largely through the heritability of ideology.   So,  
14 for example, if your parents are liberal Democrats but,  
15 you know, you turn out to be sort of biologically a tilt  
16 conservative, then while you will start out, probably  
17 start out identifying as a Democrat, you may by the time  
18 you're 30 have drifted over and be an independent or  
19 possibly even a moderate Republican.   So that what's  
20 being -- what's operating there is this underlying  
21 ideological tendency to make you more or less  
22 comfortable with a party.

23                       I remember talking to a southern senator at  
24 one point, and he said, "This is a bunch of baloney.   I  
25 know it's a bunch of baloney because I used to be a

1 Democrat, and now I'm a Republican." I said, "So even  
2 though" -- he said, "How could it be biology? I have  
3 the same" -- "I have the same genes that I had 20 years  
4 ago when I was a Democrat, but now I'm a Republican." I  
5 said, "Well, I don't know. I guess maybe you just  
6 thought about it and decided to change your world of  
7 view." He said, "I didn't change. The damn party has  
8 changed." I said, "Okay. You're sure making my point  
9 for me here, and you're sure making it easy." It's  
10 like -- it really is a really good example. Right?  
11 He -- you know, he was comfortable enough for a while in  
12 the old Democratic Party because it had a very  
13 conservative southern wing, but he shifted over.

14 So in that sense your -- sort of your  
15 predisposition can affect your likelihood of staying in  
16 a party you inherit from your parents. It can have an  
17 affect when your parents are of different parties. I  
18 come from a mixed marriage. My mother was a Democrat.  
19 My father was a Republican. My brother is a Republican.  
20 I'm a Democrat. So you know how those things work. You  
21 got to pick your battles and pick who you're going to  
22 side with. But partisanship itself is largely a choice  
23 people make or a choice they don't make in the sense  
24 that they inherit it, so I -- in the U.S. at least party  
25 ideas is an identification. It is closer to your

1 religious affiliation than it is to most other traits.  
2 It is not just a preference for one party over the  
3 other. People don't just say "I prefer the Democrats."  
4 People say "I am a Democrat."

5 **Q. Correct.**

6 A. That wouldn't be true in Europe. Most  
7 Europeans don't identify themselves as a party. They  
8 identify which party they prefer or vote for or where  
9 they are in a kind of party spectrum, but they don't  
10 typically think of themselves as -- in the way that we  
11 think of ourselves as Texans or Catholics or Americans.  
12 So it's a -- it's a self-identification, and like most  
13 self-identifications there's strong childhood effects,  
14 and then strong adult choice effects. So what -- so  
15 would underlying -- underlying ideological drive more in  
16 a nonpartisan than a partisan? I think it would --  
17 obviously it would depend on a lot of things. There's a  
18 social science answer for you.

19 My guess is it's probably more important --  
20 it probably is more important as the salience of  
21 ideology goes up in the campaign itself. So I'll make a  
22 bold prediction here. Ideology is going to become  
23 increasingly important in nonpartisan elections, not  
24 just because they're nonpartisan, but because ideology  
25 is being injected into those elections, even in the form

1 of really frank partisanship. Right? So they just  
2 aren't -- you know, the old days when the median  
3 Republican and the median Democrat were both sort of  
4 good school people, right, the -- the school board  
5 elections were nonpartisan because mainstream  
6 Republicans and Democrats, although they were  
7 ideologically different, believed in quality, free  
8 public education, believed in good universities. Right?  
9 Those days are over. That just is not the case anymore.

10 **Q. Indeed.**

11 A. And so that's going to become -- you know, we  
12 don't -- go to a school board meeting. My God. I used  
13 to tell my students to go to school board meetings and  
14 federal court hearings because it would be  
15 inspirational. I sure as heck don't tell them that  
16 anymore. Federal court still is inspirational. You  
17 know, I know. I'm pretty careful telling them which  
18 judge. No, I'm not going to share that --

19 **Q. Okay.**

20 A. -- information at this point. So yeah. I  
21 mean, I don't know. I guess it's -- it's a good  
22 research question.

23 **Q. Is it possible?**

24 A. It is -- I think it is possible that -- I mean,  
25 quite frankly I think, yeah, it's -- and, again, I don't

1 think it really -- I don't think you can really -- one  
2 of the things I think people misunderstand about our  
3 work is that people have this idea that if something has  
4 some genetic precursor or some physical brain precursor  
5 that it must be more important or less -- you know, less  
6 variable or something else. And I always try to tell  
7 students that, you know, the -- sort of the biology of  
8 human politics is like the -- is like the bayou current.  
9 You may not even realize bayous are flowing bodies of  
10 water. You could live right here a long time and not  
11 recognize the bayou actually flows in some direction,  
12 you know, unless of course we got a quarter of an inch  
13 of rain, in which case they're obviously moving. But  
14 it's a very small, very weak force, but it's a constant  
15 force. And the day-to-day forces, the things that  
16 happen in our lives, the people that we respect, the  
17 jobs we take, those are big forces. They're powerful  
18 forces. They push us all over the place.

19 And you just -- you can -- you can just  
20 look at the change in, you know, in the average Democrat  
21 or the average Republican's position on a whole host of  
22 things over time. Those social forces are powerful  
23 forces. The power of your brain's biology is that it  
24 works 24 hours a day very quietly in the background and  
25 slowly -- whatever position you get pushed to you --

1 like a boat on a very slow -- I can predict the  
2 direction. All other things being equal you're going to  
3 come back toward that center of gravity that your  
4 biology gives you with regard to ideology. And that's  
5 about all. Just a weak force that tends to pull you --  
6 it tends to pull you in a direction. So it's definitely  
7 not the strong force that people normally think of  
8 biology as being. When it comes to things like  
9 ideology, which are quite abstract, we're much too smart  
10 to be led around by that. Right? Because we're unlike  
11 other animals. We don't just think. We think about our  
12 thinking. That metacognition is a really distinctive  
13 trait, and it reduces, right, and it reduces -- that's  
14 why we have the ability to defer gratification in ways  
15 that are really remarkable.

16 **Q. Some of us. Not necessarily me.**

17 A. Yeah. Well, you know, I'm not doing such a  
18 great job myself. But just speaking as one person to  
19 another who can only defer certain kinds of  
20 gratification on a successful basis. But the point is,  
21 of course, right, that the -- sort of the ability to be  
22 aware of that, to be able to think about that really  
23 reduces the ability for -- for at least some drive.

24 So the other thing I think is really  
25 important is that politics is a -- is a part of what

1 makes us social animals. And that's really not the most  
2 fundamental part. Right? The really fundamental parts  
3 of us, the things that are survival driven are  
4 appetitive and aversive. Right? So our appetitive  
5 drives, our drive to sexually reproduce, our drive to  
6 get food, to get shelter, those basic drives are really  
7 powerful things. And those are things that we have --  
8 can struggle with controlling. But, you know, this sort  
9 of slight left-right predispositions are pretty modest  
10 drives, and therefore our ability to outthink ourselves  
11 is really pretty powerful in that realm.

12 **Q. Fair enough.**

13 A. Not to mention the effect of other people.  
14 Like any time I find myself drifting however slightly  
15 conservative I have my wife to correct my thinking and  
16 to point out that I'm drifting a little bit, a little  
17 bit in the wrong -- in the wrong direction, or my  
18 brother to point out that I'm just a complete idiot for  
19 believing pretty much anything, anything that I believe  
20 so --

21 **Q. Do you believe, or is it your position, that**  
22 **there's a genetic component to race?**

23 A. Yes.

24 **Q. Could you talk a little bit more about that**  
25 **please?**

1           A. So, I mean, if you think about the -- obviously  
2 there's a -- there's a thing called race that's a  
3 completely social figment -- not a figment -- but it's  
4 completely a social creation. It's an intellectual  
5 thing. It's an abstract category in which we bundle all  
6 kinds of things. But if you want to look at sort of  
7 what are the things that are most likely to create that  
8 bundle, right, there's a reason why we talk about people  
9 of color. Right? There are gradations in the tint of  
10 people's skin, and that gradation of the tint of their  
11 skin is genetic. We can be tanned or untanned, but the  
12 amount of -- you know, all other things being equal, the  
13 proportion of external melanin in your skin is  
14 hereditary. Right? If both of your parents are black,  
15 you're likely to be black. Right?

16                 So in that sense the markers out of which  
17 we've created this -- this kind of sometimes reasonable  
18 and mostly unreasonable figment about racial categories,  
19 the markers themselves are -- are often genetic. And  
20 because they're genetic they both provide an easy hook  
21 for saying "you're different than me." Right? "I can  
22 see that you're different." And skin color is one of  
23 the markers that's commonly used for that. Although  
24 there are other more subtle markers that are used in  
25 things like the caste system in India, for example.



1           **Q. Sure.**

2           A. So there's a biological hook there. And then  
3 does that biological hook create all this other  
4 epiphenomena around it? It doesn't. But it does make  
5 that -- it helps make that epiphenomena more powerful  
6 out in the world. The fact that it's biological helps  
7 account not only its -- for some of its power, but also  
8 for some of its invidiousness. Right? Because you  
9 can't change the -- you're born a skin color. You're  
10 born tall, or you're born short. Right? So physical  
11 characteristics that are -- you're born with that are  
12 present at birth and are genetic are not things that you  
13 can change. And recognizing that you can't change them  
14 can be powerful in reducing things like racism, but they  
15 also can be things that trap people. Right?

16                 If you're in the Dalit category, you're  
17 born into it, and you're trapped into it. And if you  
18 are -- you know, if your parents are black and you're  
19 lighter skinned than they are, you may be able to choose  
20 a different racial category for yourself. But for the  
21 most part that's not something people can do. So it  
22 isn't an act of will, and so things that are imposed on  
23 that basis are things that people can't control.  
24 Recognizing that I think is really -- can be very -- can  
25 be damaging in the sense that it -- when people think of

1 it as biologically different they think, therefore, the  
2 solution to that might be genocide. On the other hand,  
3 if you think it's not biological, then the solution may  
4 be reeducation. Right? So for a genocide -- I always  
5 tell my students genocide is wrong not because it's  
6 mistaken, although it is, it's wrong because it's  
7 genocide. Right? But reeducation -- the Chinese  
8 cultural revolution is wrong. It killed millions of  
9 people. It destroyed families and societies all on the  
10 false belief that you could completely change, you know,  
11 a college professor of art into a good farm laborer in  
12 their mind by just making them do farm labor. Right?  
13 So you can't change everything about people, whether  
14 it's what they think or the way they appear.

15 And the solution to that can be much more  
16 positive. And I think you see that with sexual  
17 orientation. Right? So in an era when people believe  
18 sexual orientation was a choice then people did not want  
19 people to make the wrong choice. Well-meaning parents,  
20 probably to protect their kids from making a mistake in  
21 that era, possibly even well-meaning lawmakers, tried  
22 to -- tried to regulate that. As the proportion of  
23 people who think that sexual orientation is something  
24 you're born with goes up the proportion of people who  
25 care about it goes down.

1           **Q. I understand.**

2           A. So young people today believe that you're born  
3 into the sexual orientation, and so that expression  
4 "born that way," right, what about it? Right? "This  
5 is" -- "this is just" -- "this is who I am." And so I  
6 think as much as history has come down for the most part  
7 on negatively exploiting the characteristics, the  
8 physical -- heritable physical characteristics that we  
9 then bundle up into this fiction of race it's -- it's  
10 also possible understanding that those are just physical  
11 characteristics people are born with can -- can diminish  
12 that, as it does in the case of sexual orientation. And  
13 my hope is that the same thing is true with regard to  
14 ideology.

15                       I tell my students, "I know you don't  
16 like" -- I mean, these are Rice students. So there are  
17 like two conservatives in the class, and they're not --  
18 nobody is happy with them when they pipe up. And so I  
19 say, "Look, you're not happy with," you know, whatever  
20 it is they're saying here, "but you know what? Don't be  
21 so full of yourself. Don't be so proud that you're a  
22 liberal. You know, but for the grace of God or but from  
23 your genetics you could have been this person. How  
24 would you feel about that? And you conservatives,  
25 you're like looking down your nose at all these

1 liberals. You know, just roll the dice. You could have  
2 been born a liberal." Right? "So if you just accept  
3 that they're born that way then you can stop  
4 wanting them" -- you can stop thinking that what they're  
5 doing is directed at you, and you can stop thinking that  
6 you're going to change them" because anybody who's spent  
7 any time discussing politics knows you're not going to  
8 change very many minds. You're going to make people  
9 mad, but you're not going to change -- you can change  
10 policy. You can find a way to make a policy work that  
11 fits somewhere in between. But if your way to change  
12 policy is change the mind; that is, change the  
13 fundamental ideological beliefs of your fellow  
14 legislator or your next door neighbor, that's a fool's  
15 errand. Right? It's just not going to happen.

16 So if you just accept it -- I mean, most of  
17 my neighbors are conservatives and, you know, I'm not  
18 fans of their politics, but I -- you know, I don't have  
19 any personal animosity to them. You know, I put up my  
20 signs, and they put up theirs, and, you know, we stare  
21 at each other, but I don't -- most of them are what they  
22 are, and I -- that's just -- one of our graduate  
23 students, a very talented black graduate student is  
24 very, very conservative and very political. And he  
25 said, "It's hard. It is hard. It's" -- "in many ways,"

1 he said, "it's harder now to be a black conservative  
2 than it is just to be black," right, that the -- the  
3 people just don't like it. They just think he's wrong,  
4 and they don't understand why he would -- why he would  
5 side with people who don't side -- who have animosity  
6 toward him because of the color of his skin.

7 Just a really tough -- another student who  
8 is very openly gay and very conservative, like  
9 Federalist Society, and he said the weird thing about  
10 being at Rice is nobody cared that he was gay, but  
11 everybody thought the fact that he was in The Federalist  
12 Society was like -- like people looked at him with open  
13 disgust when they found out he was in The Federalist  
14 Society. He said the funniest thing was that the other  
15 people in The Federalist Society because they were just  
16 young Rice people, right, they just said, "You're gay.  
17 I mean, obviously. You know, you're a smart person, and  
18 you are a moral person, so you wouldn't choose to be  
19 gay." Or it wasn't that they weren't, you know, openly  
20 prejudice against that idea. But they said, "You know,  
21 you're a good example." Right? "People don't choose to  
22 be gay because God knows you wouldn't choose to be. So  
23 that's just the way you are." And they were pretty  
24 accepting of him. But the people in the Gay and Lesbian  
25 Student Association never accepted the fact that he was

1 a conservative. At the end of the day that kept coming  
2 up. This was actually during that era of the W.  
3 campaign --

4 **Q. Sure.**

5 A. -- when it was being openly exploited to drive  
6 voter turnout in Florida and Texas. And they just could  
7 not -- and he said, you know, until he took this class  
8 he didn't -- he didn't really have a response. He just  
9 knew that he believed in conservative things. And so he  
10 said, "This is" -- "this is what I tell people now.  
11 When people say 'how could you be a conservative,' I say  
12 'I was born that way. This is the way God made me, and  
13 I can't help it.'" So, you know, I think it can be --  
14 again, it could be a positive or a negative thing.

15 I don't think it's useful -- again, denying  
16 that there's a biology to sexual orientation I think is  
17 a very bad idea. Whether at a particular moment in time  
18 that's the -- that's creating prejudice. Right? You  
19 can think -- you know, one of the solutions if -- if in  
20 fact people are just born that way and they can't change  
21 it, then there's an obvious solution. If gay is wrong,  
22 then you just kill gay people. You could just do one of  
23 those little tests like Down's syndrome. "Wait a  
24 minute. My kid is going to be born gay. Let's, you  
25 know" -- "you know, you should just get rid of those

1 people." And obviously that's not the way the modern  
2 world thinks, but you can see where that might occur to  
3 people if they believed it was -- if they believed it  
4 was biological. It might be easier from that  
5 perspective to be able to convince people that you could  
6 change your sexual orientation.

7           The same way that, you know, Protestants  
8 and Jews in Europe, like, you know, "Tell me kiss the  
9 ring. Whatever. What is it you need me to do here?  
10 Like, I don't want to end up with my head on a pike."  
11 So -- so I think there can be -- there can be a downside  
12 to it. But at the same time I think denying -- denying  
13 that there are -- when you say that everything about  
14 race is nonbiological, including then the suggestion  
15 that there are not physical traits that have been used  
16 to build on top of that a racial fiction, then I think  
17 you -- you really put yourself in a bad position because  
18 empirically it's -- there are characteristics that are  
19 heritable. And if we're going to -- if by person of  
20 color you just mean someone with darker skin, that  
21 characteristic you're referring to is a -- very much a  
22 biological characteristic. It's something they can't  
23 change by will. It's something that they're going to  
24 pass on to their children. And so it's a -- it's a --  
25 you know, it is a -- it is a physical marker. And I

1 think that's -- that part of it is a reality. The rest  
2 of it not.

3 **Q. Okay. Fair enough.**

4 A. Hence -- hence the fact that you got to -- when  
5 you look at ideology across race and ethnicity there are  
6 big party differences, but as Texas Republicans are  
7 discovering while there are party differences across  
8 Hispanics and non-Hispanics there are also some pretty  
9 big ideological mismatches between those categories.  
10 And you can -- that can be exploited, or you can -- you  
11 know, you can ignore that.

12 W. wanted to -- well, W. very much wanted,  
13 you know, to make Hispanics majority Republican. I  
14 don't believe that that's shared by all the leaders of  
15 the current Republican party. But there's certainly --  
16 there's a lever to do that, and the lever to do that is  
17 that, you know, Hispanics are conservative, moderate, or  
18 liberal at pretty much the same levels as everybody else  
19 in Texas, and -- and so if you stop poking them in the  
20 eye with a sharp stick they -- you know, they might  
21 actually come around and vote for a more -- for sort of  
22 a business conservative party so --

23 **Q. My next question actually is that do you**  
24 **believe that there is a correlation between genetically**  
25 **determined ideology and race?**



1           A. No.

2           **Q. Do you believe that there's a correlation**  
3 **between genetically determined ideology and ethnicity?**

4           A. No.

5           **Q. Okay. So the dispersion of ideology among the**  
6 **ethnicities and races is roughly equal regardless of --**

7           A. Yeah, I don't -- I don't believe that. I  
8 don't -- I don't know that, so the -- the kind of scale  
9 of study that it would take to establish that is -- it  
10 would take a very large-scale study. It would have to  
11 be -- it would have to be a global study because you  
12 don't want to get people in particular settings. So I'm  
13 not aware that anybody has actually done that on that  
14 scale, but I've never seen anything to indicate that  
15 there -- that those two things were associated, and nor  
16 do I have any reason to believe they would be.

17           **Q. Okay. Just one last question I think, and then**  
18 **I'm going to confer with Barry and make sure I got all**  
19 **the spaces. But I did want to ask you a little bit**  
20 **about your book, if you don't mind. So you wrote a**  
21 **book. What's the title of the book, sir?**

22           A. "Predisposed."

23           **Q. You wrote it with some other authors, and**  
24 **you've --**

25           A. Yes.

1 Q. -- published with these authors before?

2 A. Yes.

3 Q. Largely on the topic of conversation we just  
4 had for about the last 25 minutes, correct?

5 A. Correct.

6 Q. Okay. Now, I haven't read the entirety. But  
7 what portion of the book did you write?

8 A. Fairly little.

9 Q. Okay.

10 A. So the actual writing, sort of the text is  
11 mostly the work of -- I'd say probably two-thirds the  
12 work of Kevin Smith and -- and first draft. The rest of  
13 it would be Hibbing. So mine sort of -- the book is --  
14 pulls together a bunch of things that we've done  
15 research on, or that we've presented papers on, talked  
16 about and so forth. So I was actively involved at  
17 the -- at the research phase and served primarily as --  
18 sort of in the early stages in outlining what the book  
19 was going to look like, what we were going to put in  
20 what sections. But the book itself was written almost  
21 entirely by, the text of the book, by Hibbing and Kevin  
22 Smith at Nebraska.

23 Q. But you endorse these findings largely?

24 A. Yes.

25 Q. Is there any part of the book that you don't

1 **endorse?**

2 A. I don't -- I haven't read the book since the  
3 book came out, so I -- I couldn't -- if you point me in  
4 the direction of something, I'll tell you if I endorse  
5 it or don't endorse it.

6 **Q. I'm not cherry-picking. I'm just wondering. I**  
7 **want to make sure that this is your opinion and are**  
8 **parts of your opinion.**

9 A. Parts of it are certainly my opinion but I  
10 didn't write most of it so there may well be stuff in  
11 there that I don't agree with. That's -- you know,  
12 there are values to team research, and there are --  
13 there are disvalues. Right? Sometimes there are things  
14 in there that -- you know, that weren't what you  
15 personally believed but, you know, somebody feels  
16 strongly about them.

17 **Q. So I want to talk a little bit about the**  
18 **portion called "Different Slates." And specifically I**  
19 **want to talk about the racial portion of it or the --**  
20 **that's the wrong way to say it. There's a portion of**  
21 **this chapter that talks about racial policies,**  
22 **specifically Affirmative Action. Do you -- are you**  
23 **aware -- do you remember that part of the book?**

24 A. Yeah.

25 **Q. And I'm not sure I understand the conclusion.**

1 And I want to -- I don't want to put this in the record.  
2 This is my book. I love it. But I want to make sure  
3 I --

4 A. Well, we got that on the record. I'm happy.  
5 Do whatever you want.

6 Q. I want to talk about the finding here. So if I  
7 could hand it to you.

8 A. Yes.

9 Q. If you could read it, review it, and tell me  
10 what's being said, specifically from the last paragraph  
11 of 163 to the first paragraph of 165.

12 A. All right.

13 Q. All right. Here you go.

14 A. Yes.

15 Q. So what is that part of the book talking about?

16 A. So there are -- this is not our research, but  
17 there's a big body of research by Haidt and Graham and a  
18 whole research team that focuses on kind of dimensions  
19 of -- they call them dimensions of moral thinking that  
20 underlie dimensions of kind of political belief or  
21 political ideology. And John Jost, a political  
22 psychologist, picks up on some of this as well. So, you  
23 know, people have sort of placed different values on  
24 different kinds of things. Right? So one of the things  
25 some people feel very strongly about is that basically

1 everybody should be treated the same, right, that we  
2 should be colorblind or race blind, whatever. And  
3 they -- and that's a -- for them that's a -- that's a  
4 strong principle. For other people in their -- their  
5 moral judgments are more connected to what Haidt's -- a  
6 category Haidt calls care or harm, which is people are  
7 motivated to respond on the basis of, you know, if -- if  
8 someone has been harmed, they -- they deserve care. And  
9 so that they look at it in terms of, you know, sort of  
10 responding in a -- what you might think of as maybe a  
11 more empathetic way.

12 But, again, you can -- there's a morality  
13 if you believe Haidt and Graham. There is a kind of  
14 morality and also a kind of a political belief centered  
15 around the issue about -- about care and harm. This is  
16 what Lakoff, who I think is mistaken, calls this  
17 maternal politics versus paternal politics. So the sort  
18 of politics of order and respect and hierarchy, he  
19 teaches those as sort of paternal politics. And  
20 maternal politics is more about this kind of care and so  
21 forth. So you can think about that in -- I think one of  
22 the areas is -- maybe it's quite clear -- is sort of in  
23 like sentencing guidelines. Right? So what should --  
24 how should you sentence people? I mean, this -- one of  
25 my colleagues asked, he says, "I never understood why if

1 you're going to pass a law to make something illegal why  
2 don't you define what the punishment is for it?" Right?  
3 "So if the punishment is the death penalty, it's the  
4 death penalty." Right? "And if not's the death penalty  
5 then I'd like to know what it is." He said, "Like if  
6 you rob a bank what is the appropriate punishment? I  
7 mean, if it's a year, make it a year. If it's 10 years,  
8 make it 10 years." So his idea is you take an action,  
9 the action has a consequence, and the consequence should  
10 be the same for everybody. He doesn't like the idea  
11 that some people get life in prison and some people get  
12 parole. He thinks that's just wrong, everybody should  
13 be treated the same.

14 And, of course, we've experimented with  
15 that in terms of judicial sentencing guidelines, and we  
16 know the havoc that can produce. Right? Because it  
17 just doesn't make any -- it doesn't make any sense to  
18 not treat people as individuals. This is what students  
19 of a bureaucracy called Bureaupathology, which is  
20 everybody wants -- when somebody walks into a Social  
21 Security office what do they want? They want to explain  
22 to someone what their particular problem is, and then  
23 they want the person to fix their particular problem on  
24 their particular basis. Like, "I know that this is  
25 supposed to take it here, or whatever, but I need it to

1 be fixed now because" -- "you know, fix it." And what a  
2 bureaucrat does, of course, is they just follow standard  
3 operating procedures. So to some people that's the  
4 morality of large-scale organized standard operating  
5 procedures bureaucracies, is if you're the king of  
6 England or, you know, if you're a homeless person you're  
7 treated exactly, in the case of most people's belief,  
8 exactly as badly by the Social Security Administration  
9 regardless. Right?

10 And the other side of that is, of course,  
11 is people in different situations being treated equally,  
12 for example, being punished equally, or being served as  
13 poorly or slowly, is completely inappropriate because it  
14 doesn't at all match the circumstance they find  
15 themselves in. It's not equal when you treat everybody  
16 equally when they're not in the same situation, when  
17 they haven't done the same thing, or when they're not  
18 capable of achieving the same thing or so forth. Right?  
19 So the question is do you want to -- you know, do -- are  
20 you inclined toward viewing treating difference  
21 differently as a moral hallmark or on treating everyone  
22 equally as a moral hallmark. And then the question is  
23 is one of those hallmarks in and of itself inappropriate  
24 or -- they are the way -- these are just -- these aren't  
25 things that we create out of philosophy. These are

1 discovered things. They're found things. This is the  
2 way some people view the world. Most people are  
3 somewhere in between. But there are people who feel  
4 very strongly that sort of equality under the law means  
5 everybody is treated exactly the same way and there  
6 could be no -- no interference in that.

7 Other people feel very strongly that that's  
8 a really -- it's, you know, an immoral approach and, in  
9 fact, is born of a kind of indifference to people's  
10 humanity, which it may be. But some people are much  
11 less sensitive to the humanity of other people. Some  
12 people have very high levels of empathy. Some people  
13 have remarkably low levels. And that's not always  
14 because of the conditions they grew up in. Those are  
15 also -- there's actually a syndrome called Williams  
16 syndrome in which people simply don't have the  
17 capability of separating their utilities from other  
18 people's. They'll -- they act only on other people's  
19 utility, no concern for themselves at all. That's -- I  
20 mean, in some ways that's amazing. Right? What a great  
21 kind of a person. But it's hardly neurotypical. People  
22 who are completely and unalterably selfish, which we  
23 often call sociopaths, are also not neuro -- thankfully  
24 not neurotypicals. But they -- but that is -- that is  
25 what they believe.



1           **Q. But these moral hallmarks -- I didn't mean to**  
2 **cut you off. I apologize. I think the point is is that**  
3 **they're -- it's biologically measurable, correct?**

4           A. Right. So there is an -- there is an  
5 underpinning to that that has to do with different  
6 brains. Right? So, again, people who are -- who tend  
7 to be selfish can learn to be less selfish, can -- but  
8 it's really about -- it's sort of on second thought.  
9 Right? You can learn -- because we have metacognition  
10 we can learn that our first impulse is perhaps not very  
11 generous or that our first impulse may be too generous.  
12 Right? And then we can learn to discipline that on our  
13 own. But the impulse is the impulse, and some part of  
14 that impulse comes from life experience, but some part  
15 of that impulse also differs biologically across  
16 individuals.

17           **Q. And I think that in that paragraph one of the**  
18 **impulses is a racial impulse, correct? By which I mean**  
19 **racist.**

20           A. So, I mean, you certainly could have a racist  
21 impulse.

22           **Q. That's biologically determined, correct?**

23           A. I think there are -- there are features of  
24 biology that incline people to be -- again, I think you  
25 have to be careful about exactly what you mean by

1 racist. But to be ethnocentric; that is, to be  
2 suspicious of people who are not like them on a whole  
3 lot of -- in a whole lot of ways, people that aren't  
4 like them on the basis of race, on the basis of  
5 nationality, the basis of language, on the basis of  
6 religion, on the basis of appearance, even on the basis  
7 of gender, right, sort of the -- you know, the sort of  
8 traditional patriarchal religion is very suspicious of  
9 having women anywhere around them, so those -- those  
10 impulses can vary across individuals biologically or the  
11 kind of things that socially build into those and create  
12 things like fascism can come out of those, can be  
13 encouraged by those. It doesn't mean that everybody who  
14 ends up falling into the thrall of that in a national  
15 situation, for example, is therefore sort of -- again,  
16 the environment has a big influence. And so the  
17 question of sort of how could Germany get this way or  
18 how could Japan get this way that was asked around World  
19 War II is really inappropriate in the sense that in --  
20 in one sense the Japanese could be that way because they  
21 were Asian, and for the Germans it's, well, I guess  
22 because they were Germany, I mean, because they weren't  
23 France. I don't know what. But, again, that was -- you  
24 know, that's -- that's inappropriate.

25 But it is the case that some individuals,

1 you know, take to -- take to those kinds of things very  
2 quickly, very easily, right, without much effort can  
3 fall into almost habitually think in ways that are  
4 clearly racist. And for other individuals it's less so.  
5 And the point here is not that. The point is that  
6 people that have a strong belief in the importance of  
7 equality -- I was involved in a case where the expert,  
8 the expert for the other side said Clarence Thomas was  
9 clearly a racist. I have trouble with that. He -- I  
10 mean, I happen to think he's a remarkably poor jurist,  
11 but that's really a separate issue. Right? I differ  
12 with him on all kinds of notions of not only judicial  
13 philosophy, but, I mean, you know, his habitual  
14 inactivity for a long time on the court, and he's now  
15 rediscovered his voice and -- my God. I hope to God  
16 he's back out of the hospital and fine because this will  
17 be just the kind of thing, have me like --

18 **Q. I won't do that to you. I promise you.**

19 A. -- ragging on Clarence Thomas and then he's  
20 dead. Like we find out, we come out here, he died  
21 recently.

22 **Q. I promise I won't do that to you.**

23 A. Yeah. So, you know, I'll say this. Again,  
24 I -- I assume that Clarence Thomas is remarkable -- I  
25 mean, judicial conservatism almost to the point of

1 blindness is not unnatural. I mean, I think he is --  
2 you know, some people are on -- you see this on the  
3 autism spectrum. People on the autism spectrum are also  
4 incredibly literal so you have to be really careful  
5 because they -- a sign says something, they follow it,  
6 and everybody else says, "no, no, no, that's not" --  
7 it's like "no." Right? So that literalism, you see  
8 some of that in constitutional interpretation, right,  
9 that inability -- you know, when Scalia says, "Why  
10 wouldn't it mean exactly what it says," and my question  
11 is, "Why do you think it means" -- "what makes you think  
12 that when people put something on a piece of paper it's  
13 literally exactly what they meant?" Right? Literalism  
14 is a -- is, again, a -- you can -- you can sort of --  
15 you can see where a brain that's to this side on the  
16 autism spectrum would be a natural host for a belief  
17 that all other things being equal probably people meant  
18 exactly what they wrote down. Whereas on this other  
19 side you'd say, "Well, people write all kinds of stuff."  
20 Right? "It probably doesn't tell us anything." So you  
21 can be -- you can believe that everyone should be  
22 treated equally. You can believe it's inappropriate to,  
23 as the current -- I think the current majority of the  
24 Supreme Court believes -- that -- that because race is a  
25 suspect category that anything that incorporates race

1 into decision-making, whether it's drawing district  
2 lines or anything else, is suspect. Why is it suspect?  
3 It's suspect because all other things being equal you  
4 ought not to be using race in making decisions.

5 Now, the court recognizes that while that  
6 sets a high -- a high threshold for what a state can do,  
7 for example, they recognize that there are conditions  
8 under which you do something about that. Right? So  
9 that's -- we wouldn't have Section 2 without it. We  
10 wouldn't draw districts without that. On the other  
11 hand, they also recognize that absent meeting that high  
12 threshold that it is a suspect category, that in just  
13 sort of regular legislation if you put race in there  
14 that's inappropriate, and it ought not be in there  
15 because everybody ought to be treated the same  
16 regardless of race. So that -- the point of this  
17 paragraph is just that you should not assume that people  
18 who believe that everyone should be treated equally  
19 believe that because they're fundamentally racist.  
20 Among other things, it dilutes the importance of  
21 understanding that people are fundamentally racist.  
22 Right?

23 I think that's really one of my problems  
24 with calling every difference in voting behavior,  
25 however slight, and even if it occurs without regard to

1 the race of candidates, racially polarized voting, is  
2 exactly Brennan's concern, which is if that -- if you're  
3 going to label that, people are going to say "wait a  
4 minute. So you're saying the voters of Spring Branch  
5 are racist?" And the answer is "yes, some of the voters  
6 in Spring Branch are racist." Right? We're in Houston,  
7 Texas. There are racists here. But that's not -- it's  
8 not to say that the entire electorate is or even that  
9 the behavior of the electorate in those elections is the  
10 result of racism as opposed to something else, right,  
11 some policy concern or whatever. So I think if you  
12 don't preserve the possibility that individuals can  
13 believe in treating everyone the same without that being  
14 a code for racism then you diminish the real importance  
15 of what it means for someone to actually be racist  
16 because racists don't want everybody to be treated the  
17 same regardless of race.

18 **Q. Fair.**

19 A. They very much want people of a certain race to  
20 be treated differently. Right? So that's, I think, is  
21 a -- it's not only important to distinguish that in --  
22 just in a general sense of thinking. Although, you  
23 know, nothing that we posit here is proven in any  
24 scientific sense. We never really quite get there in  
25 science. But I think there's good scientific reason to

1 believe that those are different states of thinking,  
2 that they are -- I would -- I would be willing to wager  
3 that in, given six months, 60 subjects in an fMRI  
4 machine, I could -- I could show you a brain signature  
5 that distinguishes everyone should be treated equally  
6 from racism.

7 **Q. Which presupposes that you could use the fMRI**  
8 **machine to determine if someone is a racist, correct?**

9 A. It means -- not certainly. But at some -- at  
10 some predictive value above random that you could  
11 separate -- you could have a -- you could take a set of  
12 people in which everybody said "this is what I think the  
13 law should be, no regard to race," and you could find  
14 the signal that separates -- I mean, I don't even --  
15 honestly I wouldn't take your money this is so easy.  
16 But yes. The brain's signature for actual racism is  
17 really not hard.

18 **Q. How common is it?**

19 A. That we don't know. We don't know how common  
20 that is.

21 **Q. Does it affect voting behavior?**

22 A. I would -- it's hard to imagine that racism  
23 wouldn't affect voting behavior.

24 **Q. So some part of voting is affected by racial**  
25 **politics and racial biological determinism, correct?**

1           A. I don't believe in biological determinism, so  
2 I'm not going to say that. I really don't. I don't  
3 believe in environmental determinism, and I don't  
4 believe in biological determinism. It's just not a  
5 way -- as is true with voting. There are a host of  
6 factors that affect people's votes. Those factors may  
7 be very small factors for some people. They may be  
8 subconscious factors for some people. They may be  
9 factors that they override in metacognition. They may  
10 be factors that they don't override. They may be  
11 factors that are in fact their view of the world and  
12 their -- and the way they see things. Right? So they  
13 may be frank and open racist attitudes.

14           And I think you -- to understand -- to  
15 characterize the impact of that on a particular election  
16 system you have to have a sense of the degree to which  
17 that's actually playing out in the election system. And  
18 I don't think the -- sort of the current court system  
19 for doing that is perfect, but I think it's been pretty  
20 serviceable and done a pretty decent job. And I don't  
21 think it tries to -- my view of this -- and I know it's  
22 not universally agreed to -- but my view of this is that  
23 what's important is if the -- if the -- if the nature of  
24 the way that force is operating in the election system  
25 creates certain things that can happen and certain



1 things that can't, and those things disproportionately  
2 affect both the choice of minority voters and the  
3 opportunity of minority candidates, then that's the  
4 level at which you need to think about getting another  
5 election system, for example.

6 **Q. And do you have an opinion about whether that**  
7 **has been met here today or for SBISD? Have you ever**  
8 **advised them on that?**

9 A. Well, I don't think I'm supposed to tell you  
10 what I told the lawyers in terms of my advice.

11 **Q. It depends on when. Right?**

12 A. What?

13 **Q. It depends on when. Let's say before 2017 did**  
14 **you ever advise them that they had to consider adopting**  
15 **single-member districts?**

16 A. My recollection is that as early as the  
17 dismissal of the case in what I think was maybe the '90s  
18 on Gingles I my advice to the district was that as  
19 change took place over time they should think seriously  
20 about changing -- in whatever form they wanted to they  
21 should change their election system. And I was  
22 certainly, you know, happy to talk to them later about  
23 alternatives in terms of things like cumulative voting.  
24 So that's -- you know, my view has been that that's --  
25 that was prudent for the district to do. It's not that

1 I knew for certain. No one ever knows what's going to  
2 happen in a lawsuit. But I think, you know, you can  
3 give advice as I do quite commonly to -- to districts  
4 about what's prudent. And I think that was my advice  
5 then. That's -- you know, I don't -- I personally don't  
6 think lawsuits are something that's good for school  
7 boards. So I know they have their own -- again, they  
8 have their own preferences. I'm not an opponent in any  
9 sense of at-large elections. I think there's a very  
10 good reason why at-large elections are not on their face  
11 illegal. I think there's a very good reason why groups  
12 like the Urban League still -- you know, it's still a  
13 very common form of election for small cities and  
14 municipalities, and it has -- it has benefits to it.

15 On the other hand, I don't worship at the  
16 alter of -- I was at a school board meeting once and a  
17 fella in full uniform, about 80 years old, stood up and  
18 said, "I didn't fight in World War II and Korea for  
19 single-member districts." And so I didn't say anything  
20 because it's really rude to say things like that to old  
21 people. Besides, he had a -- just enough of a  
22 resemblance to my dad that I was afraid he might smack  
23 me if I said anything. But my answer to him would have  
24 been, "Yes, you did." Right? "The entire United States  
25 Government, every election to every office in the United

1 States Government is based on some form of single-member  
2 district whether it's the House or the Senate, the House  
3 which declared the war you fought in first and didn't  
4 the second. And we're so obsessed with it that even the  
5 president even though it's impossible to elect a single  
6 individual in a series of single-member districts we  
7 insist on doing it anyway and electing the president in  
8 each of our 50 states. That's how" -- "that's how  
9 obsessed we are as a country. The country you fought  
10 for is a country obsessed with single-member geography  
11 in a way the Europeans find just absolutely implausible  
12 and unaccountable."

13 So there's -- there's nothing magic about  
14 at-large elections, but -- and, again, I -- you know, I  
15 would much prefer the U.S. adopt a parliamentary system.  
16 I think we're at the breaking point for geographic  
17 representation. We're not going to solve the partisan  
18 gerrymandering problem short of just getting rid of the  
19 obvious problem, which is geography. Right? We  
20 don't -- we are not a geography to be represented  
21 anymore. That just doesn't make any sense. We once  
22 were, but we are now people to be represented. That's  
23 what proportional representation is for. It solves  
24 pretty much all the problems you can think of but --

25 **Q. We need a Constitutional Convention to do**

1     **that, right, so --**

2           A.   Yeah.   And God knows -- I'll tell you what.   I  
3   used to always scoff, you know, when people say "oh,  
4   you" -- "you don't want a Constitutional Convention  
5   because God knows what they would do."

6           **Q.   God knows.**

7           A.   But that's before -- that was before like the  
8   last 10 years.   And now I'm coming around to the view of  
9   I don't think I want a Constitutional Convention because  
10   God knows what they would do.

11           **MR. GOLANDO:**   I'm going to take a small  
12   break here, sir.

13           THE WITNESS:   All right.

14           **MR. GOLANDO:**   I really enjoyed the  
15   conversation.   I appreciate your time, but let me just  
16   make sure that I have done my job correctly.

17           **MR. CRAWFORD:**   Sure.

18                   (Recess from 1:59 p.m. to 2:07 p.m.)

19           **Q.   (BY MR. GOLANDO)**   Okay.   We have just a few  
20   questions.   I want to authenticate some documents and  
21   add some documents into the record.   And then I have  
22   some questions based on this, if you don't mind.

23           A.   All right.

24           **Q.   So my first thing is I want to -- I'm going to**  
25   **hand you Exhibit 6, Expert Exhibit No. 6.   I believe**

1 this is a copy of your consulting agreement with SBISD.

2 Would you authenticate that for me, please?

3 A. Yes, that's correct.

4 Q. And that's your signature on the back page?

5 A. It is.

6 Q. And that's a true and correct copy of that,  
7 correct?

8 A. Yes.

9 Q. And do you have your contract that you had  
10 before twenty -- before the litigation began, the one  
11 where you -- that governs the OLS and the EI that you  
12 provided to Ms. McBride?

13 A. I -- I might or I might not. I'm not sure  
14 because I was doing a whole bunch of things with the  
15 same law firm, so I don't know if we were just, you  
16 know, working on different things or if there's a  
17 separate, something that -- either an umbrella or an  
18 actual contract, but I'm happy to look and see.

19 Q. If you wouldn't mind taking a look.

20 A. Yeah.

21 Q. I'd like to see it. And if you want to make  
22 the record more fulsome you have time to edit the  
23 deposition or to provide any discovery. Discovery does  
24 close on March 30th, but --

25 A. All right.

1 Q. -- whenever you get to it I'd be appreciative.

2 The next one is the article you provided  
3 that formed the basis of part of your report. It's --  
4 I've labeled it Expert Exhibit No. 7. The title of it  
5 is "Republican Party of Texas Doubles Down on Local  
6 Elections." Is this a true and correct copy of that  
7 article, sir, that you relied on?

8 A. Yes, it is.

9 Q. And I noted in your report that -- I don't  
10 think you made a reference to partisanship at all. And  
11 I also asked you if you had measured partisanship. I  
12 just wonder what role did this play in your report, sir.

13 A. In the -- it sort of comes in in two places,  
14 but primarily with regard to the discussion of the --  
15 the literature on the potential negative effects of  
16 switching to at-large elections. There's the discussion  
17 about how this can end up becoming -- itself becoming a  
18 political issue, and so that -- it's part of that notion  
19 that board elections are becoming increasingly  
20 politicized, not just partisan but politicized, and that  
21 this is sort of one of the things that may -- that may  
22 feed into that. So there's -- there's just a  
23 different -- or there's a different system for both  
24 identifying potential candidates and for advancing  
25 political campaigns for school boards and for

1 nonpartisan cities than there was 20 years ago.

2 Q. Reasonable. But your report doesn't cite to  
3 this article, correct?

4 A. It's something that I looked at, and so I  
5 brought it because I didn't remember if I had cited it  
6 directly --

7 Q. Okay.

8 A. -- or if I was just -- but it is something that  
9 I looked at that, and that affected my thinking in  
10 writing the report.

11 Q. Thank you, sir. I appreciate it. The last one  
12 is Expert Exhibit No. 8. It looks like what's called an  
13 SSN memo. I'm not sure of the source of that. It's  
14 titled "Do District-Based Elections for School Board  
15 Help Minority Candidates Get Elected?" I'm going to  
16 hand it to you. Could you authenticate it for me, sir?

17 A. Yes.

18 Q. Is that a true and correct copy of the article?

19 A. Is there a -- is there a page missing?

20 Q. That's what we have I think.

21 MR. ABRAMS: I think there was a third page  
22 with a -- just one line on it.

23 MR. CRAWFORD: I believe those were your  
24 originals. So let's see if we --

25 MS. SHAKRA: This page or --

1                   **MR. ABRAMS:** No. I think that there was --

2                   **MS. SHAKRA:** Let me see.

3                   **MR. ABRAMS:** I just remember there being  
4 like a one sentence page.

5                   **THE WITNESS:** Yeah. I think this is the --

6                   **MS. SHAKRA:** The one missing?

7                   **THE WITNESS:** Is there a page that looks  
8 like that?

9                   **MR. CRAWFORD:** I don't know that we made  
10 a -- that made the copy.

11                   **MR. GOLANDO:** Maybe it's in the back of the  
12 contract.

13                   **MS. SHAKRA:** Did it get out of order?

14                   **THE REPORTER:** Do y'all want to go off the  
15 record, by the way?

16                   **MR. CRAWFORD:** Sure.

17                   (Discussion off the record from  
18 2:11 p.m. to 2:12 p.m.)

19                   **Q. (BY MR. GOLANDO)** I've handed you expert  
20 **Exhibit No. 8. Could you authenticate it? Is that the**  
21 **article you relied on in part for your report?**

22                   **A.** Yes.

23                   **Q.** Okay. What was important about this article  
24 **for your report from your perspective?**

25                   **A.** It's not particularly important because it's



1 not really research, per se. But I thought it was  
2 useful because it's a -- you know, this is part of a  
3 kind of a public policy synopsis kind of thing that sort  
4 of -- it's supposed to be helpful to policymakers. And  
5 the researcher points out two things. One is he points  
6 out this idea that, you know, that may not always be --  
7 there might not always be a positive effect for Latino  
8 representation in the switch from at-large to  
9 single-member. And he also points out that his research  
10 shows that school board elections are partisan even if  
11 they're not explicitly partisan in the form of the  
12 ballot. And so I thought that not only does it sort of  
13 show those two things, but it -- it shows that it's  
14 being discussed by people not just in a research sense  
15 but in a kind of -- sort of the form of kind of public  
16 policy recommendation.

17 **Q. And what is the source of this article?**

18 A. I found it on the Internet, and it's a -- as  
19 best I remember, it's a site that has a whole series of  
20 things where people reflect on -- sort of produce brief  
21 summaries of kind of research findings that may be of  
22 use related to -- related to public policy.

23 **Q. And --**

24 A. I think it's San -- San Diego I think is where  
25 this -- where the person is.

1           Q. And there's no data associated with this? He's  
2 just summarizing previous reports, correct?

3           A. Correct.

4           Q. And you're not sure of the source of that data  
5 or whether it has implications for SBISD, correct?

6           A. Correct.

7           Q. Okay. And finally, sir, if you could read this  
8 paragraph. The first paragraph right after the subject  
9 heading.

10          A. Yep.

11          Q. What does that say, sir?

12          A. He's saying that the effect is mixed but one  
13 directional. That is, it can either help to close the  
14 gap, or it can have no effect.

15          Q. So at worst it has zero effect, and at best it  
16 could actually increase representation, correct?

17          A. That's -- that's his summary.

18          Q. And the election change he's talking about they  
19 are single-member districts, correct?

20          A. I assume that's what he's talking about.

21               MR. GOLANDO: All right. Pass the witness.

22               MR. CRAWFORD: We'll reserve our questions.

23               (Whereupon at 2:16 p.m. the  
24 deposition was concluded.)  
25

REASON

[illegible]

1 I, JOHN R. ALFORD, PH.D., have read the  
2 foregoing deposition and hereby affix my signature that  
3 same is true and correct, except as noted above.  
4

5 \_\_\_\_\_  
6 JOHN R. ALFORD, PH.D.  
7

8 THE STATE OF \_\_\_\_\_)  
9 COUNTY OF \_\_\_\_\_)  
10

11 Before me, \_\_\_\_\_, on  
12 this day personally appeared JOHN R. ALFORD, PH.D.,  
13 known to me (or proved to me under oath or through  
14 \_\_\_\_\_) (description of identity  
15 card or other document) to be the person whose name is  
16 subscribed to the foregoing instrument and acknowledged  
17 to me that they executed the same for the purposes and  
18 consideration therein expressed.

19 Given under my hand and seal of office this  
20 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
21  
22

23 \_\_\_\_\_  
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25 THE STATE OF \_\_\_\_\_  
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1                   IN THE UNITED STATES DISTRICT COURT  
 2                   FOR THE SOUTHERN DISTRICT OF TEXAS  
 3                   HOUSTON DIVISION

4           VIRGINIA ELIZONDO,                   §  
             Plaintiff,                       §  
    §  
 5           v.                               §   Civil Action No.  
    §   4:21-CV-01997  
 6   §  
             SPRING BRANCH INDEPENDENT §  
 7              SCHOOL DISTRICT, ET AL.,   §  
             Defendants.                       §

8  
 9  
 10                   REPORTER'S CERTIFICATION  
                     DEPOSITION OF JOHN R. ALFORD, PH.D.  
 11   MARCH 24, 2022

12  
 13           I, John G. Rochelle, Certified Shorthand Reporter  
 14           in and for the State of Texas, hereby certify to the  
 15           following:

16           That the witness, JOHN R. ALFORD, PH.D., was duly  
 17           sworn by the officer and that the transcript of the oral  
 18           deposition is a true record of the testimony given by  
 19           the witness;

20           That the deposition transcript was submitted on  
 21           \_\_\_\_\_ to the witness or to the attorney for  
 22           the witness for examination, signature and return to  
 23           Worldwide Court Reporters, Inc., by \_\_\_\_\_;

24           That the amount of time used by each party at the  
 25           deposition is as follows:

1 Mr. Barry Abrams - 00:00

2 Mr. Martin Golando - 03:39

3 Mr. Charles J. Crawford - 00:00

4 That pursuant to information given to the  
5 deposition officer at the time said testimony was taken,  
6 the following includes counsel for all parties of  
7 record:

8 Mr. Barry Abrams, Mr. Martin Golando, Attorneys for  
9 Plaintiff;

10 Mr. Charles Crawford, Mr. Lucas Henry, Attorneys  
11 for Defendants.

12 That \$\_\_\_\_\_ is the deposition officer's  
13 charges to the Plaintiff for preparing the original  
14 deposition transcript and any copies of exhibits;

15 I certify that a review of the transcript was  
16 requested.

17 I further certify that I am neither counsel for,  
18 related to, nor employed by any of the parties or  
19 attorneys in the action in which this proceeding was  
20 taken, and further that I am not financially or  
21 otherwise interested in the outcome of the action.

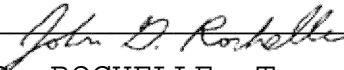
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24

25

1 Certified to by me this 5th day of April, 2022.  
2  
3  
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JOHN G. ROCHELLE, Texas CSR 5644



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